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# AMERICA SPEAKS

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## *A Library*

OF THE BEST SPOKEN THOUGHT  
IN BUSINESS  
AND THE PROFESSIONS

*Edited by*

BASIL GORDON BYRON

*and*

FREDERIC RENÉ COUDERT

Eastern Montana College  
Library Billings

NEW YORK

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## INTRODUCTION

THE history of mankind has clearly demonstrated that the great leaders of thought, the individuals who have wielded the most powerful influences, have been those who possessed in marked degree, the power of logical, forceful speech. The civilized world has heaped honors and rewards upon those who, by persuading others, have changed the path of history and turned dreams into realities. This is natural, for there is no power which so affects human emotions, sways judgments and convinces reason as does the power of the spoken word.

Particularly is this true today in both business and the professions. The speeding up of modern civilization has narrowed the world and increased the field of influence of the individual. There are few business or professional men who are not called upon occasionally to "say a few words." It is of course greatly to one's advantage to acquit himself creditably.

To be of practical assistance to such business and professional men on such occasions is the object of this work. The recent development of business speaking especially marks a new era in the history of "eloquence." The speeches of such leaders of industry and commerce as Judge Gary, Charles M. Schwab, Will Hays and Otto Kahn are typical of the new relation of effective speech to business. The editors, therefore, have selected the best of such speeches, covering as wide a scope as possible, and included them in a single volume to be used as a compendium not only of model talks, but also of vital business information.

Similarly, the outstanding addresses of the legal profession have been selected, not only for the use of attorneys but for business men as well. Commerce and the law are closely related to-day and the ideas and opinions of recognized leaders in both fields are here preserved for the guidance of this and future generations.

In past years it was the practice to invite political personages, well known ministers or other "professional orators" to address conventions and other meetings of business men. But not so today.



Business men for business occasions is the rule and it is fast becoming recognized that the ability to speak forcefully and convincingly is the irreducible minimum of preparation for the executive.

This is clearly shown in the addresses before Chambers of Commerce, Manufacturers' Associations and other similar organizations which will be found in this volume. In each case the speaker is a prominent member of the association or at least a leader in that particular field.

The meetings of legal associations, on the other hand, have usually been addressed by members of the profession. But the evolution of modern public speaking is also very clearly demonstrated in these professional speeches. Gone is the "flowery oratory" of the past and in its place is the straight-from-the-shoulder talk of men who have something to say and know how to say it. The legal addresses deal directly with legal questions of great public interest today. Respect for the Law, Commerce and the Law, the Supreme Court and kindred subjects are discussed by those best qualified to do so.

Care has been taken to give the speeches and addresses in full, omitting only detailed statistics or other such statements that have no general interest.

In order to make this volume a practical and constantly useful reference work, a double concordance, cross-reference index has been included which enables the reader to put his finger immediately on any facts he may be seeking and at the same time obtain stimulus in the presentation of his own ideas and thoughts. Each speech is listed under its title, the name of the speaker and its subject. It will also be found under the occasion on which it was delivered. That is to say, all speeches delivered before Chambers of Commerce, for example, will be found under "Chambers of Commerce." A further listing will be found of the *important thoughts within each speech*, even though they may occupy only a paragraph of the address concerned.

Acknowledgment must be made of the helpful and intelligent cooperation of Mrs. L. K. Gelatt to whose arduous labor the success of this index is very largely due.

The section of anecdotes and epigrams will be found invaluable to the speaker. These scintillating gems of wit and wisdom add life to any address and help considerably to drive home a point. The epigrams have been classified under such headings as: Adver-



tising, Law, Leadership, Initiative, Salesmanship. The anecdotes are chiefly illustrative of incidents in business and legal life.

It is the hope of the editors that the presentation of this one volume library of the best spoken thought of business and the professions will not only prove an invaluable aid to speakers in general, but a reference work of useful information and a medium of exchange of ideas for members of the Bar and business executives.

B. G. B.













ALBERT J. BEVERIDGE



# PUBLIC SPEAKING

By ALBERT J. BEVERIDGE

"AND the common people heard Him gladly," for "He taught them as one having authority." These sentences reveal the very heart of effective speaking. Considered from the human view-point alone, the Son of Mary was the prince of speakers. He alone has delivered a perfect address—the Sermon on the Mount. The two other speeches that approach it are Paul's appeal to the Athenians on Mars Hill and the speech of Abraham Lincoln at Gettysburg. These have no tricks, no devices, no tinsel gilt. They do not attempt to "split the ears of the groundlings," and yet they are addressed to the commonest of the world's common people.

Imagination, reason, and that peculiar human quality in speech which defies analysis as much as the perfume of the rose, but which touches the heart and reaches the mind, are blended in each of these utterances in perfect proportion. But, above all, each of these model speeches which the world has thus far produced teaches. They instruct. And, in doing this, they assert. The men who spoke them did not weaken them by suggesting a doubt of what they had to say. This is common to all great speeches.

Not one immortal utterance can be produced which contains such expressions as "I may be wrong," or, "In my humble opinion," or "In my judgment." The great speakers, in their highest moments, have always been so charged with aggressive conviction that they announced their conclusions as ultimate truths. They speak "as one having authority," and, therefore, "the common people hear them gladly."



All this means that the two indispensable requisites of speaking are, first, to have something to say, and, second, to say it as though you mean it. Of course, one cannot have something really to say—a lesson to teach, a message to deliver—every fifteen minutes. Very well, then; until one does not have something to say, let one hold one's peace.

Carlyle's idea is correct. He thought that no man has a right to speak until what he has to say is so ripe with meaning, and the season for his saying it is so compelling, that what he says will result in a deed—a thing accomplished—now or after a while. In the prophetic old Scotchman's iron philosophy there was no room for anything but deeds. If such instruction is needed; if a great movement requires the forming and constructive word to interpret it and give it direction; if a movement in a wrong direction needs halting and turning to its proper course; if a cause needs leading; if a law needs interpretation; if anything really needs to be said—the occasion for the orator, in the large sense of that word, has arrived. And, when he speaks, "the common people will hear him gladly"; they will hear him because he teaches, and does it "as one having authority."

Whenever a speaker fails to make his audience forget voice, gesture, and even the speaker himself, whenever he fails to make the listeners conscious only of the living truth he utters, he has failed in his speech itself, which, then, has no other reason for having been delivered than a play or any other form of entertainment.

As a matter of fact, very few of the great orators have had loud voices, or if they did have them, they did not employ them. I am told that Wendell Phillips seldom spoke in any voice but a conversational tone, and yet he was able to make an audience of many thousands hear distinctly. It is probable that no man ever lived who had a more sensuous effect upon his hearers than Ingersoll. In a literal and physical sense he charmed them. I never heard him talk in a loud voice. There was no "bell-like" quality. It was not an "organ-like" voice.

The greatest feat of modern speech, in its immediate effect, was Henry Ward Beecher's speech to the Liverpool mob. A gentleman who heard that speech told me that, notwithstand-



ing the pandemonium that reigned around him, Beecher did not shout, or speak at the top of his voice, a single time during that terrible four hours. It is true that Æschines spoke of Demosthenes' delivery of his Oration on the Crown as having the ferocity of a wild beast. I do not see how that can be, however, because Demosthenes selected Isæus as his teacher because Isæus was "businesslike" in method.

This, however, is common to the voices of nearly all great speakers: they have a peculiar power of penetration that carries them much farther than the shout and halloo of the loudest-voiced person. They have, too, a singularly touching and tender quality, which, in a sensuous way, captivates and holds the hearers. James Whitcomb Riley had this quality in his voice when reciting. Julia Marlowe has it. Olga Nethersole has it to the very highest degree. Madame Modjeska had it nearly as much.

It is a remarkable thing that there is neither wit nor humor in any of the immortal speeches that have fallen from the lips of man. To find a joke in Webster would be an offense. The only things which Ingersoll wrote that will live are his oration at his brother's grave and his famous "The Past Rises Before Me Like a Dream." But in neither of these productions of this genius of jesters is there a single trace of wit. There is not a funny sally in all Burke's speeches. Lincoln's Gettysburg address, his first and second inaugurals, his speech beginning the Douglas campaign, and his Cooper Union address in New York, are, perhaps, the only utterances of his that will endure. Yet this greatest of story-tellers since Æsop did not adorn or deface one of these great deliverances with story or any form of humor.

The reason for this is found in the whole tendency of human thought and feeling—in the whole melancholy history of the race—where tears and grief, the hard seriousness of life and the terrible and speedy certainty of our common fate of suffering and of death, make somber the master-cord of existence. The immortal things are all serious . . . even sad. It is so with speech—I mean the speech that affects the convictions and understandings of men. I am excluding now that form of speech which is merely a species of entertainment. It belongs



to the same class, though of a higher order, as the theatrical exhibition.

Where there is an earnestness of thought (and earnestness is only another name for seriousness) there will always be the same quality in manner—an impressiveness in bearing and delivery. This is inconsistent with merriment of delivery, which robs speech of a certain weight and intrinsic worth. It is also inconsistent with the voice of storm and the hurricane manner. And men in deadly earnest do not talk loud. It has been my fortune to see men angry and aroused to the point of killing; they were intense, but quiet. I have also seen that bravado and drunken boisterousness which thought it imitated, and meant to imitate, genuine rage; it is always strident and violent, never dangerous, never sincere. The same thing is true in speech. There have only been two or three roarers in effective oratory . . . Mirabeau, by all accounts; and Demosthenes, if Æschines is to be believed, which I think he is not to be in this particular. He was only excusing his own defeat, and he had to attribute it to delivery (I think any unprejudiced mind will agree that Æschines made far the better argument). All the other great speakers have, even in their most intense passages and in situations where life and death were involved, been comparatively quiet.

I remember, as if it were yesterday, the first great speaker I ever heard. It was Robert G. Ingersoll delivering a lecture in Des Moines, Iowa, in 1884. He had an audience which would have inspired eloquence in almost any breast. He came on the stage alone, and was very carefully and elegantly attired, even to the smallest item of his grooming. His address was in manuscript, and imperfectly committed to memory. He laid it down on a little table at the back of the stage (returning to it occasionally to refresh his memory), and then, in a very natural and matter-of-fact way, walked to the footlights and, looking the audience frankly in the eyes, began without an instant's hesitation and in a voice precisely as if he were talking to a friend.

But he was as dramatic at his climax as Edwin Booth ever was in "Hamlet." His face paled, or seemed to pale; his hands clenched with a desperate energy, and the whole attitude of the



man was that of one in awful wrath; and yet his voice was not raised above the common current of the evening's address—if anything, it was lower. While the mature mind cannot endure Ingersoll's rhetoric, it must be acknowledged that his manner of delivery (except when his levity made him coarse) was nearly equal to that of Wendell Phillips. Both of these men had that instinctive taste of the great speaker which Shakespeare has described better than any one else in literature, when he makes Hamlet tell the players not to "mouth it, as many of your players do. I had as lief the town-crier spoke my lines. Nor do not saw the air too much with your hand, thus; but use all gently: for in the very torrent, tempest, and (as I may say) whirlwind of passion, you must acquire and beget a temperance that may give it smoothness. Oh! it offends me to the soul to hear a robustious, periwig-pated fellow tear a passion to tatters, to very rags, to split the ears of the groundlings; who, for the most part, are capable of nothing but inexplicable dumb shows and noise: I would have such a fellow whipped for o'erdoing Termagant; it outherods Herod: pray you avoid it."

When I was a very young boy I saw a fist-fight which impressed me as powerfully as any lesson I ever learned at school. An over-tall and powerful man about forty years old had become very angry at a medium-sized but very compact man of about the same age. As his passion increased his violence grew until, finally, he was shouting his denunciations. The little man stood quietly, and also stood pat. Finally, with a great volume of sound, the big man rushed upon the little one with arms swinging in the air, and I looked with interest and curiosity to see the smaller man either run or be demolished. He did neither. His fists were raised, quickly but intensely, before him, and when the big man was almost upon him, it seemed to me that his right hand did not shoot out farther than ten or twelve inches—but it did shoot out, and the result was as if the big man had been shot sure enough. He fell like a slaughtered ox, but rose and came on again, only again to be knocked out. This continued for three or four times, for the giant was game, but, finally, he was "thrashed to a standstill," as the expression has it.



It was a great lesson in life, and a great lesson in speaking, which is only a phase of life. The victor came to the point. He did not dissipate his energies. It is so in the manner of speaking. The greatest contrast to the perfect method of Ingersoll which I ever beheld in a man of equal eminence was in the delivery of a lecture by Joseph Cook.

He came on the stage with ostentatious impressiveness. He sat some time before he was introduced. After introduction he stood with one hand thrust in the breast of his tightly buttoned frock-coat, and looked tremendously all over the audience for, perhaps, an entire minute. Everybody was awed. He looked so great. We all said to ourselves, "What a mighty man this is!" And, when that effect had been produced upon us, the first and great point of effectiveness had been destroyed—the speaker had made us think about himself, his manner, his appearance, his personality. All the evening we had to wade through that slough, trying to follow his thought. And this reminds me of a saying of Charles G. Dawes, one of the most astute politicians and most capable public men of recent development, which is:—

"The surest sign that a man is not great is that he strives to look great."

I think the best speech I ever heard for obedience to the rules of the art was an address of about ten minutes by a young Salvation Army officer on the streets of Chicago. I listened with amazement. He was, perhaps, twenty-three years of age, with delicate, clear-cut features, sensitive mouth, and marvelously intelligent eyes. I was just passing the group as he stepped into the circle that always surrounds these noisy but sincere enthusiasts. He took off his hat, and in a very low, perfectly natural and very sweet voice, speaking exactly as though he were having a conversation with his most confidential friend, he began: "You will admit, my friends, that human happiness is the problem of human life." And from this striking sentence he went on to another equally moving, showing, of course, that happiness could not be secured by traveling any of the usual roads, but only the straight and narrow path which the Master had marked out. It was as simple as it was sincere. And it was as conversational as it was quiet. Before he had finished



his audience had gathered into itself every pedestrian who passed during his discourse—business man, professional man, working-man, or what not.

The fight above described suggests the key to the matter, as well as the manner, of speaking. The American audience properly demands, above everything else, that the speaker get to the point. Our lives are so rapid; the telephone, telegraph, and all the instantaneous agencies of our neurotically rapid civilization have made us so quick in seeing through propositions; a hundred years of universal education have produced a mentality so electric in its rapidity that effective oratory has been revolutionized within a decade.

Burke would not be tolerated now. It is doubtful, even, if Webster would. The public had already tired of the lilt of Ingersoll's redundant rhetoric, pleasing as was its music. Speech must now be a statement of conclusions. The listeners, with a celerity inconceivable, sum up the argument on either side of the proposition you announce, and accept or reject it by an almost unconscious process of cerebration.

The most successful speech of to-day would be one of Emerson's essays, rearranged in logical order—if such a thing were possible. Therefore, in matter, the statement is the form of address most effective to-day. Senator McDonald, the greatest natural lawyer I ever knew, told me that the best argument in a case was always the statement of the case. This is true on the face of it, of course. In form, the sentences should be short; in language, the words should be as largely as possible Anglo-Saxon. These are the words of the people you address; therefore, they are most influential with them. Also, therefore, your best method of getting Anglo-Saxon is to mingle with and talk with the common people. Also, therefore, the next best method is to read the Bible, the King James translation of which is undoubtedly the purest fountain of English that flows in all the world of our literature.

What nonsense the repeated statement that public speaking has had its day, that the newspaper has taken its place, and all the rest of that kind of talk. Public speaking will never decline until men cease to have ears to hear. How hard it is to read a speech—how delightful to listen. Speaking is nature's



method of instruction. It begins with the mother to child; it continues with teacher to pupil; it continues still in lecturer or professor to his student (for the universities are all going back to the old oral method of instruction); and it still continues in all the forms of effective human communication.

The newspapers are a marvelous influence, but they are not everything and they do not supply everything. For example, it is commonly supposed that they absolutely and exclusively mold and control public opinion. But they do not. When all has been said, the most powerful public opinion, after all, is that from mouth-to-mouth public opinion—that living, moving opinion which spreads from neighbor to neighbor, and has fused into it the vitality of the personality of nearly every man—yes, and woman; don't forget that—in the whole community.

And the philosophy which underlies this is what makes public speaking immortal. The Master understood this very well, and that is why He chose to speak by word of mouth rather than by writing epistles. The Savior never wrote a single epistle—no, not even a single word. He spoke His Message. Think of a gospel announced to the world in cold type! Absurd, is it not? It may be repeated in that form; but its initial power must come from the spoken word and vital personality of its author. But it was not “extemporaneous.” All His life He had been preparing His few sermons—lessons.

The great speakers to whom I have listened have confirmed certain conclusions upon the subject of speaking at which I arrived while in college. It seemed to me that the college method of speaking was wrong, because it was irrational—that the studied gestures, the “cultivated” voice, the staccato impressiveness, were all artificial devices to attract the attention of an audience to these things instead of to the thought of the address.

Analysis of the problem convinced me that an audience is only a larger person—a great collective individuality—and, therefore, that whatever, in manner or matter, will please, persuade, and convince a person, will have the same effect upon an audience. Hence, one readily deduces that a simple, quiet, and direct address, a straightforward, unartificial, honest manner,



without tricks of oratory, is the most effective method of lodging truth in the minds of one's hearers.

Any affectation, any mannerism, detracts from the thought, because it calls the attention of the listener to the mannerism or affectation, when his whole attention should be monopolized by the thought. Read Herbert Spencer on the "Philosophy of Style," and apply his reasoning to the delivery of an address, and you have the rationale of the art of speaking, as well as of speech, put with that wonderful thinker's unerringness.

The method commonly employed in preparing speeches is incorrect. That method is to read all the books one can get on the subject, take all the opinions that can be procured, make exhaustive notes, and then write the speech. Such a speech is nothing but a compilation. It is merely an arrangement of second-hand thought and observation, and of other people's ideas. It never has the power of living and original thinking.

The true way is to take the elements of the problem in hand, and, without consulting a book or an opinion, reason out from the very elements of the problem itself your solution of it, and then prepare your speech.

After this, read, read, read, comprehensively, omnivorously, in order to see whether your original solution was not exploded a hundred years ago—aye, or a thousand; and also, to fortify and make accurate your own thought. Read Matthew Arnold on "Literature and Dogma," and you will discover why it is necessary for you to read exhaustively on any subject about which you would think or write or speak. But, as you value your independence of mind—yes, even your vigor of mind—do not read other men's opinions upon the subject *before* you have clearly thought out your own conclusions from the premises of the elemental facts.

And as to style, seek only to be clear. Nothing else is important.

Consider the method of the Savior in His addresses to the people. Next to Him, those perfect specimens of the art of putting things are the speeches and epistles of St. Paul. I know of nothing in literature so clear, convincing, and logical. The words of the Master astonish one with their absolute unity



with all the rules of effective address. Especially His method of driving home a truth by repeating it, and that, too, in exactly the same words, is noticeable and very effective. He did not fear that He would be tiresome; He was concerned only in being clear. Take the following examples:—

Therefore whosoever heareth these sayings of mine, and doeth them, I will liken him unto a wise man, which built his house upon a rock.

And the rain descended, and the floods came, and the winds blew, and beat upon that house; and it fell not: for it was founded upon a rock.

And every one that heareth these sayings of mine, and doeth them not, shall be likened unto a foolish man, which built his house upon the sand:

And the rain descended, and the floods came, and the winds blew, and beat upon that house; and it fell: and great was the fall of it.—*Matthew vii: 24-27.*

Or study this:—

And if thy right eye offend thee, pluck it out, and cast it from thee; for it is profitable for thee that one of thy members should perish, and not that thy whole body should be cast into hell.

And if thy right hand offend thee, cut it off, and cast it from thee: for it is profitable for thee that one of thy members should perish, and not that thy whole body should be cast into hell.—*Matthew v: 29, 30.*

Or this:—

Then shall the King say unto them on his right hand, Come, ye blessed of my Father, inherit the kingdom prepared for you from the foundation of the world.

For I was an hungered, and ye gave me meat: I was thirsty, and ye gave me drink: I was a stranger, and ye took me in.

Naked, and ye clothed me: I was sick, and ye visited me: I was in prison, and ye came unto me.

Then shall the righteous answer him, saying, Lord, when saw we thee an hungered, and fed thee? or thirsty, and gave thee drink?

When saw we thee a stranger, and took thee in? or naked, and clothed thee?

Or when saw we thee sick, or in prison, and came unto thee?

And the King shall answer and say unto them, Verily I say unto you, Inasmuch as ye have done it unto one of the least of these my brethren, ye have done it unto me.



Then shall he say also unto them on the left hand, Depart from me, ye cursed, into everlasting fire, prepared for the devil and his angels:

For I was an hungered, and ye gave me no meat: I was thirsty, and ye gave me no drink:

I was a stranger, and ye took me not in: naked, and ye clothed me not: sick, and in prison, and ye visited me not.

Then shall they also answer him, saying, Lord, when saw we thee an hungered, or athirst, or a stranger, or naked, or sick, or in prison, and did not minister unto thee?

Then shall he answer them, saying, Verily I say unto you, Inasmuch as ye did it not to one of the least of these, ye did it not to me.—

*Matthew xxv: 34-35.*

Consider Antony's funeral oration over the dead body of Cæsar, and note the same mastery of the art of repetition.

But, like all powerful weapons, it is dangerous to one who is not a natural speaker. It might easily be fatal, for remember that we are advised to "use not vain repetition as the heathen do, for they think that they shall be heard for their much speaking."

I doubt if any man can be a great speaker who does not have in him the religious element. I do not mean that he shall be good (one may be good and not religious, or the reverse, as any professor of mental and moral philosophy will tell you); but that he shall have in him that mysticism, that elemental and instinctive conviction of the higher power and its providence which makes him in sympathy with the great mass of humanity. Emerson has pointed out that the great speaker—yes and the great man—is he who best interprets the common feeling and tendency of the masses.

The profoundest feeling among the masses, the most influential element in their character, is the religious element. It is as instinctive and elemental as the law of self-preservation. It informs the whole intellect and personality of the people. And he who would greatly influence the people by uttering their unformed thought must have this great invisible and unanalyzable bond of sympathy with them. I will let your preacher work this out more elaborately for you.

One word more; and to this word listen and harken and bind it on the tablets of your understanding. *Insincerity cuts the*



*heart out of all oratory.* You may marshal your arguments and concoct your pretty devices of words and work yourself into a great heat in the speaking of them; but if you do not believe what you say you are only a play-actor after all—a poor mummer reciting your own lines. You had far better be a professional actor—that will, at least, insure you excellent lines to declaim.

To effect anything; to achieve a result; to make your words deeds, as the old Scotch thinker declared they should be or else not to be uttered, you must *teach*. And in your teaching you must teach “as one having authority.” To the Master we must go, after all, even for our methods of utterance; and at His feet learn that oratory is the utterance of the truth by one who knows it to be the truth. And so will your words be words of fire and your speech have weight among your fellow men.



# JULIUS HOWLAND BARNES

## TEAM PLAY BETWEEN GOVERNMENT AND INDUSTRY

Julius H. Barnes was born in Little Rock, Arkansas, in 1873, and was president of the United States Food Administration Grain Corporation and wheat director during the War. He was president of the Chamber of Commerce of the United States, 1923-24. His home is Duluth where he is engaged in the business of wheat exporting. The following address was delivered before the Los Angeles Chamber of Commerce, Los Angeles, California, February 4, 1924. Probably no man in the world is better qualified than Mr. Barnes to speak on the relation of government to industry especially in regard to the fixing of prices.

MR. PRESIDENT and my friends of the Pacific, I bring to you the greetings of the Chamber of Commerce of the United States with its thirteen hundred organization members and its underlying membership of 750,000 business men, engaged in commerce and trade. I do this with an especial personal pleasure and gratification because I am a western man myself and like the West. I do it with an official appreciation wider even, that the Chamber of Commerce of the United States makes its special acknowledgment to Los Angeles for the completion of its quota towards the new national home for business, approaching completion in Washington, a home in which we hope you will have a real part and pride. We recognize the contribution which this Los Angeles Chamber of Commerce has made to the Chamber of Commerce organization and work. Neither do we forget that two of this City's sons have to-day a great part to play in that wider field of European reconstruction with all the hopes that rest on that effort of business experience and ability to solve problems which are economic in character and



which have not yielded so far to political and governmental treatment.

It is surely a record of honor that your organization, thirty-five years old, should still hold the leadership in the esteem and support of this community. It is a hall-mark of community service. It is the evidence that it has played well its part in creating here the miracle city of America and of the world.

We also claim a measure of pride in your accomplishment and your progress and your growth. We read, with the training of business experience, what it means when this city in a single month just past, has issued more building permits than in the entire year five years ago. It is an assurance of widened human opportunity in this community drawing to itself from the best in all the industry of America.

#### THE DEATH OF FORMER PRESIDENT WILSON

My friends, America rests to-day under the shadow of a great national sorrow. In the death of former President Wilson yesterday we realize one of those momentous events which, while it is the closing chapter of an individual life, is, because of the significance of that life, also an event in national history. There closed, yesterday, the hopeless struggle of almost five years, borne patiently and uncomplainingly. To-day, as always, death seals all lips of disparagement, and to-day we recall only that dauntless courage through the dark days of war and remember best the voice of clarity and eloquence which stirred the idealism of the American soul. The mind, irresistibly carried back to the events of the days of the Great War, recalls the flood of soul-stirring memories of those days. It is a time for generous tribute to a war leader who to-day in millions of American homes symbolizes the best and finest of national aspirations. It is time for sober study of tendencies in America which developed with the War, and those which have followed since the War closed.

Because it bears witness to some of the splendid qualities of leadership which Woodrow Wilson displayed; because it may help to harden American resolution to adhere to the sane and



wholesome course in national policies, and because it carries the testimony of personal experience on which public conviction is based, I venture to submit intimately to-day something of my personal experience with the former President.

#### NATIONAL WHEAT PRICE GUARANTEE

When the armistice of the fall of 1918 ended active warfare, America faced the problem of redeeming the national pledge of a guaranteed price to the producers of the coming wheat crop of 1919. Facing a possible price collapse with the end of the War, determined to redeem its pledged faith to the American farmer, Congress did not hesitate to appropriate the stupendous sum of one billion dollars, and to authorize the use of the accumulated capital of the Food Administration Grain Corporation, of which I was then president, making a sum available from the national treasury of almost one and one-quarter billion dollars for the redemption of that pledge. President Wilson cabled from Paris asking if I would accept the office of Wheat Director, would ask my old associates in the Grain Corporation after two years of national war service under the Food Administrator, to remain another year in peace-time administration, and, equipped with adequate revenues supplied by Congress, make sure the entire fulfillment of this pledge. I accepted the position of Wheat Director with the specific stipulation that I should be responsible directly to the President, and up to the time when he was stricken ill I bear my grateful acknowledgment of the most sympathetic consideration and encouragement.

Almost from the very day when the office of Wheat Director became effective, and with the realization that there was ready access to the national treasury, theorists in both low and high station began to urge a process of deflation by a Government bread policy, paid for from the national purse. With a speciousness no greater than accompanies some of the policies urged to-day in the national Congress, there was advanced the theory that a subsidized and artificially low price of bread would, by its influence, bring down the prices of all other com-



modities in an accompanying scale. Here was to be staged a great acceleration of the process of declining prices, following war's inflation; this on the theory that meats and foods, clothing and shoes, steel and copper, furniture and building materials, wages and salaries, would all fall in healthy uniformity if only cheap bread were secured by national appropriation. There was a wave of the hand for any suggestion that even if the principle of subsidy of food could be accepted at all, other commodities might not follow, or only part of them; that at the end of the subsidy year, the termination an artificial deflation might leave disparities worse than at the beginning; that if it did not work out as theorists forecast, there would be precipitated great distress and disaster upon numberless individuals, especially those who must sell their product on a deflated market and continue to buy their necessities at war inflated prices. There was scant consideration given that the individual who found his resources sapped by a process of unequal deflation which rose from natural laws, would face that situation with courage and resolution but if that process came about by the arbitrary injection of Government influence into the play of natural forces, then there would be lasting and bitter resentment and antagonism towards Government itself.

I refused to embark with a national treasury fund upon any such sea of wind-blown theory. The pressure became at last so insistent that the question was appealed to President Wilson, and I shall ever recall with grateful appreciation the firmness and decision with which he declined to launch the Federal Government upon any such course of disastrous paternalism.

To-day, as always, there are those who would use the supreme authority of Government in an effort to shortcut the natural elimination of inequalities, always present in every human social structure. Always there are those who will recklessly use treasure raised by the taxing power of Government to attempt the quick and easy correction of disparities which inevitably correct themselves if left to the play of natural forces.

History mocks us again and again with the repetition of old problems in new forms, and blind enthusiasts and theorists repeatedly have recourse to law and edict against the repeated



lessons of history that law and edict are futile against the vast economic tides that inevitably overwhelm them.

### 1600 YEARS AGO

Sixteen hundred years ago the Emperor Diocletian, with all the authority of the then World Empire, attempted to fix, in supposedly fair relation, the intricate processes of society. Vested with absolute authority, he forced his conception of the proper relation of prices, and wages, and activities, by prescribing the penalty of death for the violation of the scale which he proclaimed. It is interesting as showing what elimination of old disparities was suggested as the ideal relation of that far-off day.

Diocletian perfected his commodity index with a care and detail which the American Congress to-day could hardly hope to excel. The record is preserved of hundreds of articles on which the price was fixed, in its relation to all commodities and to earning power. Its infinite exactness is shown, for instance, by the prescribed wage scale of a "watcher of clothes in public baths," who was to get the equivalent of nine-tenths of a cent per patron. A barber was also to get nine-tenths of a cent per patron. There is no wage scale given for a manicure, but a "veterinary for cutting and straightening hoofs per animal," was to get two and one-half cents.

There was Government control of transportation, and the tariff provided that "transportation, one person one mile," was to be nine-tenths of a cent. And to show how restrictive this was on transportation agencies, it was also prescribed that "rent for laden ass, per mile," was to be 1.8 cents, showing that unless the transportation agency carried more than two persons there was no chance for earnings against invested capital.

Diocletian appreciated the value of the legal profession of that day, and his commodity index prescribed the equivalent of \$1.09 to "an advocate or counsel for presenting a case;" and then, with a shrewd insight into human nature the commodity index allow a premium of \$4.53 "for finishing a case." Legal retainers in these recent days have certainly passed



the commodity index ratio of sixteen hundred years ago.

The day's wage of unskilled labor was about eleven cents per day, and this was the equivalent of a pound of butter, two pounds of second quality fish, or one pound of evidently attractive "sea fish with sharp spines." The skilled laborer was to get the equivalent of twenty-two cents per day, and with two days of such labor could have purchased a pair of shoes. Evidently silk stockings for the wife and daughter were beyond his reach, for "white silk per pound" was the equivalent of two hundred and forty days' wages, while even "coarse linen thread, first quality, per pound" would have taken nearly fifteen days' skilled labor.

What if it had been possible in those days for a Roman emperor or a national congress to fix the unchanging relation of commodity value and buying power! The most casual study suggests the desolating social injury which would follow a fixed value relation of that kind. Certainly American homes would not possess, as they do to-day, the wide range of necessities, comforts and conveniences which have developed into general use. We should have had no bathrooms, plumbing, telephones, phonographs, sewing machines, automobiles, radios, and motion-pictures, and we should have had to-day no working population able to send their children to the public schools, instead of to the early work-shop.

Now history records that after some months of trial it was repealed, because its practical effect was to suspend the activities of the Empire and to stop the flow of goods into the market-place.

#### RUSSIA'S RECENT FAILURE

And even in our day, and before our own eyes, we have the last great failure of an attempt to prescribe by law the price relations of commodities and relative earning power measured in human production; instead of allowing price fluctuation itself to secure its own natural correction of supply and demand.

Russia, with an imposed dictatorship, so-called, of the proletariat, in which was invested, by violence and terror, the supreme authority over a great people, has been the recent labo-



ratory in which has been tried out this same theory of edict price and edict direction of the manifold activities of a people. Prices, wages, distribution, production, all prescribed in the wisdom of a central direction, were all to be so fairly related that even a medium of exchange could be dispensed with, and the value of their money was deliberately destroyed.

Under this concentrated direction, supposedly eliminating many of the hazards and inequalities of privately directed industry, what happened to Russia's industries? This: The official statement of the Russian Government at the Genoa Conference in 1921 showed that in 1920 the production of plows was thirteen per cent of the pre-war, agricultural implements, six per cent, and iron, two per cent. Remember Russia was a great agricultural country, dependent on agriculture for production and prosperity of its peasant class as no other country in the world! Remember that Russia was equipped with coal and iron, with copper and timber and oil, and great reserves of idle labor clamoring for employment! Yet this Government-directed control of industry so miserably failed that its industry collapsed and a great people sank in three years, under that direction, to the uttermost verge of barbarism. Since then, step by step, Russia is retracing its way back to the proven practices of private initiative, recognizing the necessity for individual and national good faith in human relations, and the hope of its people for something better than a bare livelihood rests solely on the further retracing of the path upon which there was no necessity to have embarked if the lessons of history had been soberly studied.

### BLIND THEORIES OF PRICE RELATION

To-day in our American Congress, with these instances, both ancient and recent, of the futility of edict-placing of price relation in a commodity index, we have a seriously proposed bill, supported in principle by one of our Cabinet officers, that would propose to establish a Government corporation equipped with nationally-levied capital, to inject itself into the processes of buying and selling, on the theory that it can thus create that



price relation on various commodities which some official mind will think desirable.

A present-day price on a given commodity is to be fixed in its relation to a pre-war average price, in the same ratio as the general index of average commodity prices, and made effective thus by Government buying and selling. The misleading illogic of that commodity scale is shown by the statement that, although the average to-day is a theoretical 151 per cent of pre-war, yet to obtain that average there is included in that average such wide displacements of fluctuating value on individual items as rubber, at 25 per cent of pre-war, and cotton at 270 per cent of pre-war. Wheat and corn, hogs and cattle, and wool, are not to be allowed to sink below 151 per cent of pre-war average, because that happens to be the average of a commodity scale ranging from an article at one-quarter of the pre-war price, to another article at three times the pre-war price.

Suppose, for instance, that some other official mind to-day should brilliantly conceive that automobile tires should bear the same relation to pre-war prices that the general commodity average to-day bears, then fifteen million consumers, using fifty million automobile tires annually, would be paying more to-day for their tire bill by at least three hundred million additional dollars.

The American farm to-day owns three and one-half million automobiles, costing each to-day the equivalent of three hundred bushels of wheat, which in 1913 would have cost seven hundred fifty bushels. If some brilliant mind had fixed irrevocably the purchase price of an automobile at 151 per cent of its pre-war cost in wheat, the extra cost to the American farm to-day on the automobiles it now owns would represent the entire value of three successive annual crops of wheat.

The standard farm binder of 1880 cost then the equivalent of three hundred and seventy bushels of wheat, or eight hundred seventy-five bushels of corn, but it can be bought to-day for less than two hundred bushels of wheat, or less than four hundred bushels of corn. The dairy farm to-day can buy an improved cream separator for forty-five pounds less butter than in 1913.



These are some striking illustrations of the social injury which would follow an attempt by law to fix the incessant play of those potent but intangible factors of price competition which in a fair field inevitably work their own correction of disparities and in our whole national history have proven most effective in widening the circle of individual possession.

As if to add sinister absurdity to its unworkable provisions, this present bill proposes that there shall be for sale, in every post-office, a national scrip, and that by law each seller will be forced to take part payment in such scrip, and that at the end of any particular commodity transaction, perhaps a year or more in the future, this scrip will be redeemed by whatever is left in the Government Agency's hands, after it has presumably dumped abroad at a loss the surplus bought on its own commodity index price at home.

If transactions became of such magnitude that large volumes of scrip should be issued, first held by the original seller and then by process of current sale distributed into the hands of many other holders, there will flock to America the experienced and conscienceless money traders of Europe. Scrip, stamped with the name of a great Government that has held high with honor the traditional name of "dollar" through all the temptations of war's inflation and its successive deflation, will be the fluctuating victim of sinister rumor and misrepresentation such as have made the fantastic course of value of formerly honorable currencies of Europe.

This injection of Government into trading operations by which overnight some official mind may change the price levels of commodities essential to great industries, which under the modern scale of business must project their plans months in advance, will paralyze the orderly planning of America's complex industry in every direction, and put a premium upon the thoughtlessness and speculative management, as against the skilled and prudent.

The inevitable result would be to destroy the marketing and manufacturing facilities perfected in economy by intense competition, leaving a disorganization of the channels of trade and the absence of orderly markets for the certain day of ultimate failure.



Such a plan would create international distrust and hatred that ultimately would close great markets against a nation which vigorously created tariff protection for itself against foreign dumping of goods by necessitous private industry, and then embarked its own rich and powerful Government itself on subsidized dumping.

History teaches that these economic fallacies, once entered upon by Government, seldom stop until they have created utter demoralization and totally wreck the living standards of its people. Moreover, invariably an early step is the seizure by Government of land, claimed as common national property, and for its division among the workers, without compensation to the original owners. That was the course in Russia, and to-day the farm lands of Russia are held without title by peasant workers, who may be dispossessed by an edict written overnight, without warning, by those temporarily in power.

In the end, having wrecked the channels of trade at home, and injured or destroyed our markets abroad, the attempt would end in a chapter of failure and national humiliation shameful to contemplate.

#### GOVERNMENT FAIR PLAY BUT NO PRICE OPINION

Government and the official mind should have no price conviction, but have, instead, a great determination to preserve a fair field without sinister influence or imposition, so that natural forces themselves may make their price changes and their price relations without at least man's artificial inequalities to meet.

No perfect alignment of relative opportunity and relative price is ever possible. The relation will always be changing, and properly so, under the play of natural forces, but it is discouraging that there should be even in high office the necessity to repeatedly combat such specious fallacies, with their great potentiality of destruction and disaster. Why! the official mind of America a few years ago prosecuted some men for owning cotton when it advanced to the unheard-of price of



fifteen cents a pound; and to-day cotton below thirty cents a pound is looked upon almost as a national disaster.

If in this time of relative farm disability there is constructed a precedent for price influence by legislation, the farm will have established a precedent that will plague it, indeed, when the public psychology changes, as it surely will, and we again hear the cries of high cost of living which rose in this country only three short years ago. There will be used then against the farm the same principle of price relation. For instance, cotton will be held, in the interests of the great consuming class, perhaps at 151 per cent of its pre-war value, instead of its free market to-day at two hundred and seventy per cent.

It is a time for those sturdy and self-respecting leaders in agriculture itself to rise up and declare that to-day, as always in the past, the farm requires no favors, but an equal chance, confident that the human cycle will swing again and that agriculture will reestablish itself as an industry with a great future. It certainly cannot afford to forge by its own acts to-day, the chains which will hamper its future progress.

### AMERICAN INDUSTRIAL EVOLUTION

American invention and American enterprise are creating an evolution in American industry which even industrial leadership scarce yet appreciates. So fast invention follows invention that it would be strange indeed if sections of our industry were not temporarily out of step; yet irregular and uneven as this industrial progress may appear to be, the trend is clearly upward, to a higher living standard and a wider distribution of individual possession and earnings than the world has elsewhere yet attained. If we survey in detail this national progress we are struck by evidence of the slow progress of our early days, and the swift progress in these later years.

The industrial era began in 1781 with the invention of the steam engine [Watt's second patent], almost coincident with our national existence in 1782. We had had fixed power before with the windmill, water-wheel and tide mill, but here was highly concentrated power which could be lifted into the place



of greatest need, mounted on wheels and used in a thousand ways of service. There was an earning capacity resting on that discovery of power service which we are just beginning to realize. In 1782 the total wealth of the world after forty centuries of effort was one hundred billion of dollars, and to-day this single republic alone possesses three hundred billions of national wealth.

So little was the significance of that discovery recognized that Congress in 1790, protecting inventions with a Patent law, provided that every application for a patent should be passed upon by a committee consisting of the President of the United States, the Secretary of State, the Secretary of War, and the Attorney General. So slowly did invention then progress that after almost fifty years, in 1836, there were issued only 149 patents; while last year we issued forty thousand,—forty thousand ideas worthy of protection, stimulating industry to the manufacture of the thousand things with which we equip the home and office and factory of America to-day.

In the early days, it took us forty-five years from the discovery of steam power before it was applied to the first American railway, and then fifty years more before the automatic air-brake made transport swift and safe.

It took forty-one years to perfect the first telegraph into the first telephone.

It took fifty years to develop the power loom to a practical device, on which rests the great textile industry of to-day.

Then the swift progress of accumulated knowledge and experience of recent years is typified by the perfection of the radio in the space of less than three years.

Wealth creation is the conversion of the favors of Nature into forms of human use. You have seen it in Southern California. You had nothing here but climate and desert land. You had not even a harbor for the sea commerce of your section. But the desert land has been transformed to garden spots, by the genius of man and the work of his hands, while dauntless energy and enterprise have built for you a great seaport. This typical creation of wealth and accumulated individual possession out of the basic resources of nature, by intelligence, energy, resourcefulness, and initiative, has grown with accelerated speed,



evidenced by the increasing annual national income, thus:

1890 — 12 billion dollars

1900 — 18 billion dollars

1910 — 32 billion dollars

1920 — 60 billion dollars

1930 — what ?

This national attainment, which is after all only the aggregate of innumerable individual earnings and possessions, is facilitated by the peculiarly American philosophy of large-scale production; the marshalling of great phalanxes of ingenious machines devised by superior mentality, placed in the service of industry; and, enlarging the productivity and earning power of every single pair of worker's hands, creating a great flood of articles which by its very weight presses into more and more American homes for everyday use.

#### INVENTION AND MACHINE POWER

In this process industry must rely increasingly on machines, and on the power to operate machines. The swelling tide of power consumption is of special interest here in California. Industry's reliance on oil consumption, which has stimulated American production from the 26 million barrels of 1880, to the 700 million barrels of 1923, with an additional call for 100 million barrels of imports besides, is but one chapter of the expanding call for power. This State, crossed and recrossed by electric power lines, is the very symbol of the growth of electric power service, which in twenty years has risen from two and one-half billion kilowatt hours to fifty billion kilowatt hours annual consumption, and the prospect of 100 billion requirements in five years more.

This reliance on machine and power service in industry relieves the strain on working forces which this expanding industry would otherwise find inadequate indeed. This shows in the picture of a single industry, the steel industry.

A pig casting machine with seven operators replaced sixty.

Cranes for pouring, with twelve operators, did the work of thirty-seven.



An open hearth charging machine, with one operator, took the place of forty workers.

A magnetic crane, with two operators, did the work of a crew of one hundred and twenty-eight.

These instances explain why the production of steel in this country rose in thirty years from 270 tons annually to over 700 tons per worker. It is the reason why American steel will rebuild the devastated cities of Japan.

The same story runs through shoes, textiles, clothing, furniture, glass, and the whole gamut of American industry; while its very acme of achievement rests in the automobile industry, where the output of 1909 of one and one-half cars per worker rose last year to nine and one-half cars per worker, and the fifteen million automobiles in America to-day sell at a price less than half of that of pre-war, in the face of a rising price tendency generally. This process of expanded worker production does not lead to unemployment. Only by this process have we been able to find the personnel for expanding old industries and the establishment of new ones.

Here is a broad path of human advance blazed by America for the guidance of the sixteen hundred million other human beings of the world, who will learn of, and aspire to possess, the same living standards as our own, as fast as they can create a buying power. Fast or slow, they will follow the example we have established, and the path of progress which America has recorded. These are the real services of American industrial philosophy and practice which translate themselves into the security of individual homes and the possession of individual content and happiness. So splendid a record of original world leadership must not be sacrificed to theories of Government that strike at the individual impulse, the very spirit of leadership itself.

When six per cent of the world population here in America converts to human use fifty per cent of the basic elements that lend themselves to such conversion—iron, steel, oil, copper, cotton, and timber—there is a vast significance for the backward people of the world. It is of vast significance that we possess almost one-half the railroad mileage of the world, almost three-quarters of the telephone and telegraph equipment; that we



produce and use ninety per cent of the automobile service of the world.

But something more is needed than the possession of natural resources.

You could lift American industry complete into Russia tomorrow, you would find there coal and iron, and oil and timber, and copper, but you could not maintain the stream of production flowing into the homes of Russia, until Russia has laid, as America has, the foundation, generation by generation, of public school education which reflects itself into the relatively high mentality of our people, and the political stability and opportunity which stimulates individual effort.

You could also lift American industry fully equipped tomorrow into Mexico, and there find natural resources, and climate, and worker personnel, but industry would collapse, because there is in Mexico no political stability under which large-scale industry can safely function, nor is there the fair play and individual opportunity which stimulates accomplishment.

The secret is that, here in America, with natural resources, with political stability, with a people of developed mentality, we have had besides that, a political ideal which has stimulated the individual to effort by the fairness of his opportunity and the sureness of his reward, through the free processes of competitive society.

### GOVERNMENT AND INDUSTRY TEAM PLAY

In this rapidly growing and increasingly complex industry, Government must necessarily bear an increasingly insistent responsibility. Industry, which is increasingly dependent on capital and credit, must rely on wise policies of Government, which touch capital and credit in three major ways—By control of currency issuance; by its control of appointments which administer Federal Reserve policies; and by its tax relations which may stimulate or depress the expansion of industry.

Informed public opinion is the great safeguard of a free people. The ideal of the Chamber of Commerce of the United States, resting on organizations like your own, must be that of



accuracy of statement, and completeness of information which guides the formation of public opinion. It must then collect that crystallized public opinion fairly, without selfish interest, and place it in the service of Government itself. It must courageously defend the field of private initiative and private enterprise created by an American philosophy which has justified itself by a more splendid material accomplishment than the world has ever seen; and it must do all these things in a way to enlist and deserve public confidence and trust. Government must not make those ventures into the field of private industry which repeated failures in the past have thoroughly discredited, and Government must so intelligently and soberly study the rightful needs of industry that it may understand and strengthen those rightful activities and employment in which the opportunity of all our people rest.









LOUIS D. BRANDEIS



# LOUIS DEMBITZ BRANDEIS

## BUSINESS—A PROFESSION<sup>1</sup>

Mr. Justice Brandeis was born in Louisville, Kentucky, in 1856. After graduating from the Harvard Law School he was admitted to the bar in St. Louis and shortly moved to Boston where he continued the practice of law for nearly forty years. He was counsel in many cases that attracted wide public attention, notably in the proceedings involving the constitutionality of the Oregon and the Illinois women's ten-hour laws, the Ohio nine-hour law, the California eight-hour law, and the Oregon minimum wage law. In 1916 he was appointed Associate Justice of the Supreme Court.

This address sums up many of the important changes in the conduct of business which Mr. Justice Brandeis has long advocated and promoted. Not only as counsel but also as writer, speaker and citizen his efforts have been for what may be called the humanization of modern industry. The address was delivered at Brown University.

EACH commencement season we are told by the college reports the number of graduates who have selected the professions as their occupations and the number of those who will enter business. The time has come for abandoning such a classification. Business should be, and to some extent already is, one of the professions. The once meager list of the learned professions is being constantly enlarged. Engineering in its many branches already takes rank beside law, medicine and theology. Forestry and scientific agriculture are securing places of honor. The new professions of manufacturing, of merchandising, of transportation and of finance must soon gain

<sup>1</sup>Included in this volume by the kind permission of Mr. Justice Brandeis and of Small Maynard and Co., publishers.



recognition. The establishment of business schools in our universities is a manifestation of the modern conception of business.

The peculiar characteristics of a profession as distinguished from other occupations, I take to be these:

FIRST: A profession is an occupation for which the necessary preliminary training is intellectual in character, involving knowledge and to some extent learning, as distinguished from mere skill.

SECOND: It is an occupation which is pursued largely for others and not merely for one's self.

THIRD: It is an occupation in which the amount of financial return is not the accepted measure of success.

Is not each of these characteristics found to-day in business worthily pursued?

The field of knowledge requisite to the more successful conduct of business has been greatly widened by the application to industry not only of chemical, mechanical and electrical science, but also the new science of management; by the increasing difficulties involved in adjusting the relations of labor to capital: by the necessary intertwining of social with industrial problems; by the ever extending scope of state and federal regulation of business. Indeed, mere size and territorial expansion have compelled the business man to enter upon new and broader fields of knowledge in order to match his achievements with his opportunities.

This new development is tending to make business an applied science. Through this development the relative value in business of the trading instinct and of mere shrewdness have, as compared with other faculties, largely diminished. The conception of trade itself has changed. The old idea of a good bargain was a transaction in which one man got the better of another. The new idea of a good contract is a transaction which is good for both parties to it.

Under these new conditions, success in business must mean something very different from mere money-making. In business the able man ordinarily earns a larger income than one less able. So does the able man in the recognized professions—in law, medicine or engineering; and even in those profes-



sions more remote from money-making, like the ministry, teaching or social work. The world's demand for efficiency is so great and the supply so small, that the price of efficiency is high in every field of human activity.

The recognized professions, however, definitely reject the size of the financial return as the measure of success. They select as their test, excellence of performance in the broadest sense—and include, among other things, advance in the particular occupation and service to the community. These are the basis of all worthy reputations in the recognized professions. In them a large income is the ordinary incident of success; but he who exaggerates the value of the incident is apt to fail of real success.

To the business of to-day a similar test must be applied. True, in business the earning of profit is something more than an incident of success. It is an essential condition of success; because the continued absence of profit itself spells failure. But while loss spells failure, large profits do not connote success. Success must be sought in business also in excellence of performance; and in business, excellence of performance manifests itself, among other things, in the advancing of methods and processes; in the improvement of products; in more perfect organization eliminating friction as well as waste; in bettering the condition of the workingmen, developing their faculties and promoting their happiness; and in the establishment of right relations with customers and with the community. /

In the field of modern business, so rich in opportunity for the exercise of man's finest and most varied mental faculties and moral qualities, mere money-making cannot be regarded as the legitimate end. Neither can mere growth in bulk or power be admitted as a worthy ambition. Nor can a man nobly mindful of his serious responsibilities to society, view business as a game; since with the conduct of business human happiness or misery is inextricably interwoven.

Real success in business is to be found in achievements comparable rather with those of the artist or the scientist, of the inventor or the statesman. And the joys sought in the profession of business must be like their joys and not the mere



vulgar satisfaction which is experienced in the acquisition of money, in the exercise of power or in the frivolous pleasure of mere winning.

It was such real success, comparable with the scientist's, the inventor's, the statesman's, which marked the career of William H. McElwain of Boston, who died in 1908 at the age of forty-one. He had been in business on his own account but thirteen years. Starting without means, he left a fortune, all of which had been earned in the competitive business of shoe manufacturing, without the aid of either patent or trademark. That shows McElwain did not lack the money-making faculty. His company's sales grew from \$75,957 in 1895 to \$8,691,274 in 1908. He became thus one of the largest shoe manufacturers in the world. That shows he did not lack either ambition or organizing ability. The working capital required for this rapidly growing business was obtained by him without surrendering to outside investors or to bankers any share in the profits of business: all the stock in his company being owned either by himself or his active associates. That shows he did not lack financial skill.

But this money-making faculty, organizing ability and financial skill were with him servants, not masters. He worked for nobler ends than mere accumulation or lust of power. In those thirteen years McElwain made so many advances in the methods and practices of the long-established and prosperous branch of industry in which he was engaged, that he may be said to have revolutionized shoe manufacturing. He found it a trade; he left it an applied science.

This is the kind of thing he did: In 1902 the irregularity in the employment of the shoe worker was brought to his attention. He became greatly impressed with its economic waste, with the misery to the workers and the demoralization which attended it. Irregularity of employment is the worst and most extended of industrial evils. Even in fairly prosperous times the workingmen of America are subjected to enforced idleness and loss of earnings, on the average, probably ten to twenty per cent of their working time. The irregularity of employment was no greater in the McElwain factories than other shoe factories. The condition was not



so bad in shoe manufacturing as in many other branches of industry. But it was bad enough; for shoe manufacturing was a seasonal industry. Most manufacturers closed their factories twice a year. Some manufacturers had two additional slack periods.

This irregularity had been accepted by the trade—by manufacturers and workingmen alike—as inevitable. It had been bowed to as if it were a law of nature—a cross to be borne with resignation. But with McElwain an evil recognized was a condition to be remedied; and he set his great mind to the solving the problem of irregularity of employment in his own factories; just as Wilbur Wright applied his mind to the *aëroplane*, as Bell, his mind to the telephone, and as Edison, his mind to the problems of electric light. Within a few years irregularity of employment had ceased in the McElwain factories; and before his death every one of his many thousand employees could find work three hundred and five days in the year.

Closely allied with the establishment of regularity of employment was the advance made by McElwain in introducing punctual delivery of goods manufactured by his company. Shoes are manufactured mainly upon orders; and the orders are taken on samples submitted. The samples are made nearly a year before the goods are sold to the consumer. Samples for the shoes which will be bought in the spring and summer of 1913 were made in the early summer of 1912. The solicitation of orders on these samples began in the late summer. The manufacture of the shoes commences in November; and the order is filled before July.

Dates of delivery are fixed, of course, when orders are taken; but the dates fixed had not been taken very seriously by the manufacturers; and the trade was greatly annoyed by irregularities in delivery. McElwain recognized the business waste and inconvenience attendant upon such unfulfilled promises. He insisted that an agreement to deliver on a certain day was as binding as an agreement to pay a note on a certain day.

He knew that to make punctual delivery possible, careful study and changes in the methods of manufacture and of dis-



tribution were necessary. He made the study; he introduced the radical changes found necessary; and he so perfected his organization that customers could rely absolutely upon delivery on the day fixed. Scientific management practically eliminated the recurring obstacles of the unexpected. To attain this result business invention of a high order was of course necessary—invention directed to the departments both of production and of distribution.

The career of the Filenes of Boston affords another example of success in professionalized business. In 1891 the Filenes occupied two tiny retail stores in Boston. The floor space of each was only twenty feet square. One was a glove stand, the other a women's specialty store. Twenty years later their sales were nearly \$5,000,000 a year. In September, 1912, they moved into a new building with more than nine acres of floor space. But the significant thing about their success is not their growth in size or in profits. The trade offers many other examples of similar growth. The preëminence of the Filenes lies in the advance which has been made in the nature, the aims and the ideals of retaining, due to their courage, initiative, persistence and fine spirit. They have applied minds of a high order and a fine ethical sense to the prosaic and seemingly uninteresting business of selling women's garments. Instead of remaining petty tradesmen, they have become, in every sense of the word, great merchants.

The Filenes recognized that the function of retail distribution should be undertaken as a social service, equal in dignity and responsibility to the function of production; and that it should be studied with equal intensity in order that the service may be performed with high efficiency, with great economy and with nothing more than a fair profit to the retailer. They recognized that to serve their own customers properly, the relations of the retailer to the producer must be fairly and scientifically adjusted; and, among other things, that it was the concern of the retailer to know whether the goods which he sold were manufactured under conditions which were fair to the workers—fair as to wages, hours of work and sanitary conditions.



But the Filenes recognized particularly their obligations to their own employees. They found as the common and accepted conditions in large retail stores, that the employees had no voice as to the conditions or rules under which they were to work; that the employees had no appeal from policies prescribed by the management; and that in the main they were paid the lowest rate of wages possible under competitive conditions.

In order to insure a more just arrangement for those working in their establishment, the Filenes provided three devices:

FIRST: A system of self-government for employees, administered by the store coöperative association. Working through this association, the employees have the right to appeal from and to veto policies laid down by the management. They may adjust the conditions under which employees are to work, and, in effect, prescribe conditions for themselves.

SECOND: A system of arbitration, through the operation of which individual employees can call for an adjustment of differences that may exist between themselves and the management as to the permanence of employment, wages, promotion or conditions of work.

THIRD: A minimum wage scale, which provides that no woman or girl shall work in their store at a wage less than eight dollars a week,<sup>1</sup> no matter what her age may be or what grade of position she may fill.

The Filenes have thus accepted and applied the principles of industrial democracy and of social justice. But they have done more—they have demonstrated that the introduction of industrial democracy and of social justice is at least consistent with marked financial success. They assert that the greater efficiency of their employees shows industrial democracy and social justice to be money-makers. The so-called "practical business man," the narrow money-maker without either vision or ideals, who hurled against the Filenes, as against McElwain, the silly charge of being "theorists," has been answered even on his own low plain of material success.

McElwain and the Filenes are of course exceptional men;

<sup>1</sup>The minimum wage in 1922 is \$14.



but there are in America to-day many with like perception and like spirit. The paths broken by such pioneers will become the peopled highways. Their exceptional methods will become accepted methods. Then the term "Big business" will lose its sinister meaning, and will take on a new significance. "Big business" will then mean business big not in bulk or power, but great in service and grand in manner. "Big business" will mean professionalized business, as distinguished from the occupation of petty trafficking or mere money-making. And as the profession of business develops, the great industrial and social problems expressed in the present social unrest will one by one find solution.



## A. J. BROSSEAU

### HIGHWAYS AND THE TAX PAYER

Mr. A. J. Brosseau is president of Mack Trucks, Incorporated, and a member of the Highways Committee of the National Automobile Chamber of Commerce. This address, a discussion of problems in highway finance, was delivered at the Second National Conference on Education for Highway and Highway Transport Engineering, held under the auspices of the Highway Education Board at Washington, D. C.

ONE engaged in the every-day occupation of selling transportation struggles with many unsolved problems, some of which I should like to place before the educator.

Transportation is, perhaps, the most vital factor in the lives of all of us. How much attention has it been given in the text-book, and in class room work?

How does the educator define transportation?

Does he think of it as it was twenty years ago when the railroad was the only carrier, or in terms of the highly complex relationships of to-day when we have highway, water-way, electric and steam rail lines, and very soon airways to be correlated? Is he dealing with it as it will be in the future when these agencies may overturn all of our accepted theories of economics, social life and political boundaries? Has he taken into account the fact that highway transport has already injected new factors into our economics?

Does he understand the relation between the highway and the vehicle and the important service they render to the public?

Does he know that the highway and the vehicle together constitute a great factory which produces the commodity we call transportation?

Does he realize the importance of these factors in the finan-



cial scheme of things and is he prepared to assist in developing sound theories not alone of finance but of the actual physical structure of road and vehicle?

Does he know that transportation is to-day the most important problem confronting the nation, and, if we are to arrive at sound conclusions, one that requires the best efforts of the most efficient research men obtainable?

Has it ever occurred to him that the highways are not built for the individual owners, but for the public, and that the privately owned vehicles operating over the roads are in reality mere agencies for the convenience and comfort of this same public?

I ask these questions because before we can approach the problems of highway finance with the enormous sums involved, it is essential for us to understand that we are dealing with a major phase of public service. If highway transport had not become a vital element in serving the public, if the public realizing its cost did not still demand it because of the benefits which it brings, then the educator would not be justified in considering this question. The recognition which national, state and county governments have given through the large appropriations already made for highway construction, and the ever-widening use of the motor vehicle, demonstrate conclusively the public acceptance of individual transportation. Is not the task of the immediate future, then, that of laying out broad policies which will make highway transport of the greatest benefit to all?

The first step, as I see it, is a readjustment of our financial policies which will permit the counties and the states to carry on their program of highway construction and maintenance in the most equitable manner possible. Incidentally, we will have to readjust our administrative policies so that when these expenditures are made, they shall fit most exactly with the needs of public service. Every dollar of expenditure must return at least a dollar's worth of service.

A survey of highway development as it is to-day shows that we are annually appropriating sums aggregating more than \$1,000,000,000 for city and rural highway construction and maintenance. A further survey of our needs shows that this



program must be continued for ten years or more if we are to arrive at a connected system of highways which will render the greatest possible service to the public. If we were dealing with this question in the untroubled days before the World War, the matter of finance would be a relatively easy one and we would not be so much concerned with ways and means. But it is necessary to remember that to-day the nation is carrying a heavy tax budget, and, what is more important, that the state and county levies are at higher levels than they have been in the past. We must weigh well all of the elements entering into any appropriation for any purpose and only those must be made which we know will surely return a direct profit to the public. Further we must seek to definitely allocate those profits so that the burden will be borne in as large a measure as possible by those who are the beneficiaries.

### WHO BENEFITS?

Who benefits from highway improvement? In any attempt to answer this, and the many other questions ahead of us, there remains still much research work to be done. Now, therefore, the purpose must be to sketch out the paths which are indicated by governmental studies up to the present time, in order that the issues may be clarified.

Broadly speaking, we will all agree that those who are alive to-day and those who come after them down to the children of the third and fourth generations, will benefit from highway construction, provided that, once constructed, the highway is maintained. Some might go further and say that the highway, if maintained, will be of benefit for all time, but looking at this as practical men, we can concern ourselves only with a definite period of time wherein the inventive genius of the country would not have opportunity to upset our present scheme of transportation by new methods. This might well be from fifty to one hundred years.

It would then appear as a general proposition, assuming the ability of our engineers to maintain a highway once built, that the cost of highway construction should first of all be divided



between this generation and those to come, which, of course, at once implies long term highway bond issues. Here again, however, we come at once to practical limitations, the extent of which must be finally determined by economic research. Can the highway engineer maintain the road once built?

We have been accustomed to hear that roads have broken down under heavy motor traffic and that money expended for them has been wasted. Is this true? Fortunately, in this field we appear to be arriving at a definite demonstration of facts. Engineers tell us, for example, that forty to fifty per cent of the cost of construction of a highway is a permanent investment, assuming that the highway has been properly located. The right of way, the grade, the drainage, bridges, shoulders and engineering costs need only be paid for once. It is the surface which wears. Engineering records show that here the loss is less than is popularly supposed since in the rebuilding of a surface it is possible to salvage much of the material and use it for a base for new surfacing.

This leaves us with a definite need for constant maintenance and that maintenance is limited not by physical but by financial ability. We have placed too much stress upon the original construction and not enough upon the constant maintenance.

Can we assume proper location of the highway? Here again is a field for the student of political administration in its relation to economics. The state engineer looking at a map which shows the economic development of a state, the routes of through travel, and the feeder lines, has before him a bird's-eye picture which enables him to determine positively and accurately where highways should go. We cannot expect the local official to be able to gauge this so well. Centralization of authority seems essential if the public's funds are to be properly conserved.

Should we seek to develop all highway construction through bond issues? This question is one which cannot be fully answered until those preceding it are taken into account. Before we expend any funds we must know that the benefits to be derived from the improvements of a highway are more than sufficient to justify the cost of that improvement. We must



then be sure when bond issues are proposed that the improvement promises something more than the cost of maintenance.

### FUNDS MUST BE ASSURED

Before granting the authority to issue bonds, provision must be made for the proper control of construction expenditures, adequate maintenance and sinking funds. These points checked off, we are likely to find that we have come down to a consideration of the improvement of the main state systems, which will average about seven per cent of the total mileage of this country. When completed, this system will place all of us on main roads, or but a few miles away and through the feeder lines we will be enabled to reach the great highway and deliver our commodities to market.

Here then is the field in which the cost of highway construction should be divided between this generation and those to come. We are proposing that this generation shall undertake to build these roads, charge the cost to capital account, pay for them by long term bonds, use them and pass them on to the next generation in as good or better condition than we built them. We propose that each generation shall pay a fair rental charge for the use of these roads in the sum of amortization charges, and interest, plus maintenance. Shall we not then proceed as would a business man, or a farmer, when setting up his establishment? The full cost of the factory or the farm would not be assessed against the first year's income, but would be carried over a term of years, during which time the returns would be enough to meet all charges and pay a profit as well.

This must not be taken to mean, however, that we should at once proceed arbitrarily to say to every state, You must have a bond issue to take care of your road improvement program. As in all other phases of this complex problem there are a host of limitations to be set up, and it is only through investigations by trained men that we shall ultimately find the correct answer. Dogmatic statements must be avoided. Prejudice must be eliminated.

Analyses of highway development to date show that there



are two general sets of conditions which apply. The first is found in those states which, like New York, Massachusetts and some of the other eastern and perhaps middle western sections, have to deal with a developed traffic problem and have already met with many of the conditions mentioned. Perhaps Maryland is the best example, for it has a highly developed state system paid for in large part by long term bonds and now maintained from current operating funds. There is no need for a further bond issue in Maryland to-day. Perhaps there never will be. The problem of construction on the state system has been largely dealt with. In such cases there may be a period when short term bond issues will be found advisable in small lots, as often happens in business, but there is no thought that long term issues should be generally imposed where original construction has been advanced as it has in Maryland.

The other condition is that of the southern or western states, where valuations are low, mileage is high and traffic not yet developed. Here the problem is one of construction, largely. The general tax burden is high and any attempt to meet the needs of highway development from current funds would result in so retarding the program that dollars would be lost in diminished or retarded economic development where pennies would be saved. The question which here must be answered is, "Do the increased profits resulting from highway construction under bond issues, offset the difference in cost as between pay-as-you-use and pay-as-you-go methods of financing?"

Looking at this from the viewpoint of the business man suggesting clues to be run down, I want to state at the outset that if you consider this problem from the standpoint of building, let us say one hundred miles on a pay-as-you-go policy in ten years' time as against one hundred miles in one year with a bond issue, in the first case, in ten years you will have paid all of the principal charges of that one hundred mile construction, but will have obtained only an average use of fifty miles for the entire ten year period, while one hundred miles built in one year give the use of the entire mileage. This immediately suggests again the question of the benefits to be derived. In either case it must be assumed that there is to be a benefit, or the program should not be undertaken. The differences then



is the interest charged. Against that there is the ten year use of the one hundred miles, and engineering investigations now under way indicate that the difference in operating costs of transport alone over the good road as against the bad would be sufficient to defray the interest charges many times over, even if we discarded the social benefits which inure.

### WHO SHALL PAY?

Thus far we have discussed as beneficiaries only two general classes, this generation and those that follow. If the highway bond issue plan is to be carried out, however, we must set up the conditions under which these bonds will be issued, and in order to do so we should determine more specifically the question of beneficiaries in order that, in setting up our source of revenue, we shall be as equitable as possible. At once a new set of questions presents itself for examination.

What is the effect of highway improvement upon agricultural valuations?

What is the effect of highway improvement upon urban valuations?

What is the effect of highway improvement upon the operating costs of the user, the agent of the public?

The answers will vary according to the typographical conditions, economic conditions, the extent and character of the traffic. Each state will have to meet this situation as its own needs demand and these needs can only be finally determined by specific inquiry and investigation upon a very broad scale. There are few to-day, however, who will deny the influence of highway development upon the farmer. The truck gardener, the dairy products man, and even the producer of heavy staples, has found his markets favorably affected by highway improvement. Perhaps more important, the educational and social advantages derived from highway extension have opened a new vista to all. Likewise, the development of urban properties and particularly of suburban properties has been perceptibly affected. No one who drives a motor vehicle or a horse will question the beneficial effect of highway improve-



ments. How far the use of large units made possible by road improvement has affected the economics of all three groups mentioned, is a point which few can discuss fully yet, particularly with regard to road improvement costs, but here again there is a definite problem to be worked out. So that while the relative amounts may differ, it seems that any fair plan for construction should be based upon general taxes for construction purposes, since all classes are enumerated in the three broad divisions mentioned.

When maintenance is considered, however, a different answer presents itself. The damage to the wearing surface is done by traffic. Traffic benefits first by maintenance in lowered operating costs, so traffic should be expected to meet this levy. Yet at once the question arises as to what is maintenance? Shall we say that a manufacturer building a new plant or installing new machinery to take care of increased business, should consider *that* an item of current expense? Could the farmer or business man who attempted to assess such costs against his crop or output in a single year, expect the buyer to pay it cheerfully? Likewise would the extension of a highway or of widening be an item in maintenance or construction? There seems to be a close parallel in these two instances and undoubtedly where cases of this kind occur, ordinary business practice will prevail. The same problem presents itself when a road is lifted from a low to a higher type to the extent of the difference in cost.

#### REGULATION MUST BE FLEXIBLE

Another consideration which must be made a matter for thorough study is found in regulation of traffic on the highways. The whole question of finance is tied up in this point, because, after all, the only justification for any highway improvement, as I have already noted, is the service which the highway renders and that service should be permitted to grow without restraint as long as it is sound economically. If we restrict traffic unwisely, maintenance costs may be less, but transport operating costs may be swelled out of all propor-



tion, and since the public pays the bill in any case, we should seek to make highway transport in its entirety function at the lowest possible cost.

Here we can suggest a prolific field for investigation. Overloading apparently damages both road and vehicle. Seasonal limitations appear to be necessary under certain conditions, and still with a railroad congestion such as obtains to-day, *which* is of the greater public moment—the maintenance of a low grade highway surface, or its destruction by goods which must be moved? There should be definite restrictions on maximum loads, of course, at least until the highway builder can catch up with the highway user—a goal still far in the future—but it is not necessary to consider that phase in detail now. I only wish to point out that unwise regulation, just as abuse of the road by the user, may operate to the detriment of the public interest, and therefore both should be carefully guarded against, particularly where we are concerned with the general aspects of a broad financial program predicated upon the need for traffic development.

#### SUGGESTED FINANCIAL POLICY

Summing up the points made, then, I would like to suggest that out of the questions presented for your analysis we have indicated the need for a very definite policy of highway finance. Personally, I should say that subject to varying conditions of highway development, of valuations, population and traffic in the several states, the program resolves itself into this:

**FIRST:** The preparation of a "construction budget" by every state, estimating the cost of the primary and secondary roads to be built, year by year, for the next ten years.

**SECOND:** That based upon the stage of development of that program at this time, the cost of construction—all or part—shall be met by bond issues, except in those states where the construction program is practically complete.

**THIRD:** That a budget of current operating costs be set up to defray—interest on bonds, amortization charges, and main-



tenance. The amount necessary to pay interest and amortization should be included in the general tax levy. The cost of maintenance should be assessed against the user.

FOURTH: That all expenditures should be under the control of the state highway departments.

FIFTH: That regulatory powers should be as flexible as possible and lodged only within the state highway department, to be administered in accordance with the needs of the public.

### SOUND BOND METHODS

As a summary for consideration where state highway bond issues are necessary, I suggest that:

FIRST: Bond issues should be serial in form and issued for as long a period as fifty years. The fund should be expended under rigid engineering control, and provision must be made for sufficient current income to pay interest, amortization charges and adequate maintenance.

SECOND: Interest on bonds and amortization should be paid for from general taxation. Maintenance costs should be charged against traffic.

THIRD: Maintenance shall include all charges up to and including reconstruction, save extensions or added replacement costs where an inferior is replaced by a superior type of surface.

FOURTH: Only that type of road shall be constructed which is adequate for the needs of present and future traffic. This shall be determined by careful surveys both of traffic and of economic possibilities.

In conclusion, may I express the opinion of a business man that, after all, this question is a business problem—that, if you please, of manufacturing transportation. It must be dealt with from that viewpoint alone, if the interests of the public are to be conserved.



# BENJAMIN NATHAN CARDOZO

## MODERN TRENDS IN THE STUDY AND TREATMENT OF THE LAW

Benjamin Nathan Cardozo, one of the most learned and eminent of American jurists, was born in New York in 1870. He graduated from Columbia in 1889, was admitted to the bar in 1891 and has been a judge in the Court of Appeals of New York State since 1919. The following address was given at the installation of Huger W. Jervey as Dean of the Law School of Columbia University on November 17, 1924.

I BRING to you the greetings of the world beyond your walls.

To-day a chapter closes in the life of the Columbia Law School, and another yet unwritten tempts indulgence in the futilities of prophecy. The School has been fortunate in the Dean who has brought it to its high estate. The very name he bears is a symbol of his rugged strength. He has known how to combine the scholarship that delves into the past with the large and free outlook that makes the past tributary to service of the present and the future. Strong of mind and strong of purpose, he has given of his strength without stint to the high task that has engaged him here, as he is giving of it now to the task, more open to the public eye, and yet in truth, I think, no higher, that in the councils of the nation is engaging him to-day. A great law school was already in existence at Columbia when Dean Stone became its leader. The School that he leaves is greater than the one he found. He has solidified its foundations, for he has known the weights that they will have to carry. He has charted the lines, the tendencies and directions, of probable expansion, for he has seen the expanding part that universities are to play in guiding and shaping and inspiring the law of future years.

I entered the Columbia Law School in the days when the



Dwight system prevailed. I left it in 1891 as a startled and bewildered class was trying to thread its way through the mazes of a new system which descended upon it over night. When I went there, three professors divided among themselves the field of the law. I learned contracts from Professor Dwight. I would no more have dreamed of questioning in word or spirit the rules which he laid down to me as law than I would have questioned the Ten Commandments. I learned the law of real estate from Professor Lee. His notes to Washburn's treatise were for the most part references to the Revised Statutes, with cross references at frequent intervals to some half dozen leading cases, which assumed through constant repetition the lineaments of trusted friends. To his teaching on real estate he added a short course in equity on the basis of Bispham's treatise. Everything else that I learned, I learned from Professor Chase. He taught us the law of crimes and torts and evidence and practice, and guided us through some chapters of Blackstone as a sort of general introduction. That was the extent of the curriculum. There was no instruction in jurisprudence or the philosophy of law. There was none in legal history. There was none in international law. There was none even in constitutional law, unless one took advantage of optional courses that were available to students of the Law School who matriculated also in the School of Political Science. In the domain of private law, we learned nothing about corporations, nothing about admiralty or patents; and whole fields that are to-day the subject of special courses—partnership, agency, insurance, carriers, suretyship, bankruptcy, and the vast and growing theme of the conflict of laws—had only such incidental treatment as was to be found in a chapter or a section of Parsons upon Contracts. With this and nothing more, we were sent forth into the world. If anyone is disposed upon this showing to contest my right to practice law, I can make profert of the parchment which confers the precious privilege.

I would not speak disdainfully of the Law School of my era. All of its teachers were devoted and able men, and one of them, Professor Dwight, was able to the point of greatness. Disdain, indeed, is impossible when one calls the roll of the alumni, and finds so many names that have illumined the profession both on



the bench and at the bar. But it is evident upon the surface of things that the ideals of such a law school are not the ideals of the Law School of to-day; that there was as yet no conception of the function of a university in the development of law; and that if law was to advance, if deformities were to be corrected, if there was to be ever increasing adaptation to the needs of social life, we should look in vain to the faculties of law schools organized on such a basis for the genesis and impetus of forces that could transfigure and inspire. The effort was to give the student such knowledge as would enable him to practice law in the kind of cases likely to come to a beginner, which, it was rightly believed, would not often be momentous. For this it was thought he would be ready after another year of tutelage in the office of a lawyer with a friendly office boy who would contribute advice, now supercilious, now compassionate, but never, let us admit, superfluous, to the ambitious and bewildered tyro. The Law School of my time was in effect a business college. It had no thought of a greater mission. It did the day's work decently and honorably, and recked not of the morrow.

I passed out of the Law School in 1891, and with my going went, too, the old business college of my day and of the days before me. The business college stage was succeeded by a new one, which, for lack of a better name, I may call the stage of legal science. Dean Stone in a recent address styled it, more happily perhaps, the Period of Survey. In this period the Law School for the first time became worthy to be ranked as a part of a university with all that this implies. New courses were established in fields that had been ignored. What had been dealt with before in a fragment of an hour became the theme for the labors of a year or a semester. More important event than this was the introduction of the case method of instruction. No longer did the student learn by rote out of a textbook some hasty and imperfect generalization, swallowed whole as it was given him. He was put to work at the sources. With the cases themselves before him, he analyzed the facts, dissected the reasoning, criticized the conclusion. I said a moment ago that I would no more have dreamed of questioning the law as promulgated by Professor Dwight than of pitting my feeble



voice against the thunders of Mt. Sinai. He said it was the law; it *was* the law; there was nothing more about it. It was like the law of gravitation, at least until Einstein's coming made even that unstable. Wiser heads had figured it out; our business was to believe it. I had much the same feeling for the decisions of the leading courts. But all this has now been changed. A decision of the Supreme Court, *a fortiori* and, I suppose, more reasonably a decision of the Court of Appeals, is no longer a postulate to be accepted. It is a thesis to be debated. It is no longer a starting point, a premise, for new deductions. It is food for criticism and discussion. If there is anything of evil in this tendency, it is overborne by the good. But the shattering of idols is the least of the changes wrought. What has been little short of revolutionary is the new discipline of the mind. Just as laboratory work is essential for the physicist or the chemist, so is like work for the student who seeks to penetrate the mysteries that lie hidden in the judicial process. I have no doubt that the outcome of the new method has been an enormous increase in two things, in the knowledge, the exact and comprehensive knowledge of law as it exists, and in the capacity to think legally, and so to apply law and extend it to novel combinations.

Much might be said about all this, but I do not wish to dwell on it. Possibly some union of instruction by cases with instruction by text-books and lectures may be found necessary hereafter. I pass these problems by. What I have in mind to emphasize to-night is not so much the immediate product of the change of method as something that was rather a by-product, an incident. Like many of the finest things in life, like happiness and tranquillity and fame, the gain that was most precious was not the thing sought, but one that came of itself in the search for something else. Significant and helpful was the transformation that was wrought in the student mind and spirit, but there was another transformation even more significant and momentous that wrought itself gradually in the soul of the university itself. The Law School had set out to follow. It found that it was leading. It had set out to record what had been done by lawmakers and judges. It found that it was building up a jurisprudence and a philosophy and a body of



informed opinion to which lawmakers and judges were looking for inspiration and for guidance. The University was adding to its function as a recording and collecting and disseminating agency another function of equal or greater power. Its function was becoming creative. It was establishing or helping to establish the norms, the standards, the criteria of excellence, the spiritual ideals that were to breathe into statute and decision a new sanity, a new realism, a new justice and a new hope.

This, then, is the latest stage in the life of the Columbia Law School; the school of legal science, while remaining what it was, has become something else as well; the label is inexact, but for convenience I will call it the School of Jurisprudence. Analysis and history and logic still occupy its mind and form the staple of its labors; but it has visions of something greater; it feels the pulse and the thrill and the exaltation of an energy, a capacity, which is original and creative. I doubt whether anyone appreciated the change when it began or indeed for years thereafter. Only slowly and as if to their own surprise have the universities been roused to a sense of their opportunity and power. The first tokens of the new function were visible in the field of criticism. Little by little it became evident that the modern law school was wielding an increasing power as a critic of judicial labors, a court of ultimate appeal.

I do not mean, of course, that any one law school can fill, alone and unaided, a rôle so large. I mean that the law schools collectively, or those inspired by university ideals, speak with singular authority when they unite to approve or to condemn. The discussion of cases in classroom and in law reviews brings out the bad, emphasizes the good, and finally develops an informed and collective professional opinion in which precedents take their just place either of distinction or of obloquy. Until the rise of the modern law school, criticism of judicial decisions was casual and sporadic. The great scholars of the universities with their organ of expression in the university law reviews have given us for the first time a body of critics as sleepless as they are alert. There are now watchmen upon the towers.

Not only that, but the towers from which they look give them a vantage point of vision, a breadth and unity and range of view



withheld from those below. I think I shall meet with no denial when I say that for exact and profound and comprehensive scholarship, we look to-day, not to the bar or the bench, but to the teachers in the universities and other learned bodies. Maitland used to tell with glee a tale of his master Sidgwick which is recorded in a delightful article by Professor Buckland published not long ago in the *Cambridge Law Journal*. "A foreign scholar one night in Trinity was depreciating," says Buckland, "our English scholarship. He said: 'Why you have not even an English equivalent for the words Gelehrter and Savant!' 'Oh, yes, we have,' said Sidgwick, with his curious and effective stammer, 'we call them p-p-prigs.'" The tale is so good that I could not forbear quoting it, though I have done so with some misgivings lest I might seem to speak scoffingly of learning, which is too rare a growth and blossoms too often with unexpected flowers, to be cheapened by derision, however it may show itself. I reconcile my conscience by following up the story with the statement that one of the great services of the masters of history and analysis in the field of legal science has been to show how scholarship and learning can give vitality and significance to what would be meaningless without them, stripping off the husks and laying bare the kernel. Maitland and Holdsworth in England, Ames and Thayer in our own land, not to mention many others, have proved, if proof was needed, how research can be wedded to wisdom in the service of mankind. Their names are enough without more to still the sneers of sciolists. This intensive kind of study, directed first to one field and then to another, has been cultivated by the teachers in the law schools with unexampled assiduity. History has been supplemented by analysis, and analysis by history. The result has been the building up of a class of legal scholars with a technique, an equipment, a range and breadth of learning, which are the envy and despair of advocate and judge.

I often ask myself disconsolately what is the origin, the secret, of their power, what subtle emanation issues forth from the halls of universities to fill them with its essence. I think the answer must be that they never dull the edge of learning by the rust of inaction or indifference. Judges follow often, and properly enough, the line of least resistance. If they see a



clear basis for giving judgment for one party or the other, they put off the evil day when some other question, more difficult or doubtful, may drive them to the unpleasant duty of making up their minds. Not so the teacher of law. He runs out to meet the difficulty which the court has timorously shunned. He is not oppressed by that sense of responsibility which comes to judges who know that the opinions they are rendering will make law not only for the parties, but for others to come later. Our teacher has no such fear. He does what so few of us do, he thinks his problems through. Not content with the difficulties of the cases recorded in the books, he is ever inventing others yet more subtle, refining them, distinguishing them, testing his own wits and the wits of the youth whom he is training for the arena of the bar. The upshot of these gymnastics is the union of extraordinary facility with extraordinary power. I do not say that such a method can be pursued without its drawbacks and its dangers. Occasionally it leads to undue emphasis upon what is bizarre or extraordinary, upon what is merely interesting or piquant. But with all these deductions and others, it is simple justice and no more to say that the highest legal scholarship of the country is to be found to-day in the ranks of the university professors. I can think of no finer tribute to them than is implicit in the program of the American Law Institute, which is attempting, as most of you know, a restatement of the law. After the program had been laid out, and the project of restatement launched, the next thing was to find the men with the ability to execute it. We judges and lawyers were able to say that the thing should be done, and we reserved to ourselves the privilege of finding fault with it thereafter. The work of doing it we turned over to the professors in the law schools.

The whole tale is not told, however, when we pay tribute to exact and comprehensive knowledge. If there were this and nothing more, the Law School would still be what I have called a school of legal science rather than a school of jurisprudence. Little by little, however, the study of law as it exists or has existed, has been supplemented by study of the essence of law itself, the principles that direct its growth, the ends and aims that it must serve. Law is no longer thought of as something



cabined and confined in a narrow compartment of its own to be opened only by the specialist. We are looking at it more and more as a means to an end; and in thus looking at it, the conviction is gaining ground that there can be no adaptation of means to ends without knowledge of many things that lawyers have at times neglected, without scrutiny of many forces, social, economic, ethical, as well as legalistic. The university has fulfilled a part, and a part only, of its task when it has gathered a company of scholars steeped in knowledge of the history and content of the legal precepts of the past. The task remains to discover and formulate a principle of growth that will give sanity and justice to the law of the present and the future. The school of legal science becomes a school of philosophy, a school of jurisprudence.

The great things are the simple ones, simple in the sense that they are primary and fundamental. The problems that are in truth the weightiest are no problems at all for the ignorant or thoughtless. Tell me what you understand by law, and I shall know how my lawsuit will be determined, though the judgment you are to render is yet locked within your breast. Give me your point of departure and the angle of your start. I shall know where you will end. Do you think of law as a body of unyielding rules which a judge is to apply with inexorable logic? Do you think the judicial process involves a quest for standards or norms of conduct which are reflected in the behavior of right-minded men and women? Tell me this, and I shall hold it more significant, if you have a place upon the bench, than the diligence with which you have been following the advance numbers of the law reports. I do not mean, of course, that the law school of the future will make a creative jurist out of every student in its halls. Happily for our peace of mind, it aspires to nothing of the kind. The humbler function of teaching the law as it is must still be discharged, and at least for the vast majority will be the service that is needed. Only the rare spirits will hear the call for more. But the classes in your halls are in truth only a small portion of the classes that you reach. The student-rolls are a fraction, and a fraction only, of the aggregate. Beyond your walls are other and greater classes, unseen and unmatriculated, whom you are touching with your



spirit—the bar that you are rousing, the bench that you are stimulating, and even beyond these the publicists and journalists, the statesmen, the teachers of social science, the leaders of thought and action in every field, who are awaking under your guidance to a new sense of the significance of law, a new understanding of its methods, a new resolution, a new passion, to hold it true to its ideals.

There is an easy tolerance that leads to the acceptance of ancient evils as if they were part of an eternal order because known to be part of an order that is rooted in the past. A sound philosophy of law will wake us from this lethargy. I count on the universities to rouse in our profession a passion for justice that will make us tingle with shame at rules that we now view with indolent complacency. "Nought wot I of your quibbles," said the King, in a case that Dr. Bolland is fond of quoting from the Year Books, "Nought wot I of your quibbles, but [with an oath] you shall make me a good writ before you go away from here." Are there any within the sound of my voice who can listen to the ruling I am about to instance without the anger and impatience of the King, if perchance without his power? At the close of the trial my adversary moves the court to direct the dismissal of the complaint. I argue myself hoarse in resistance to his motion. The trial judge, after hearing both of us, announces his decision, dismisses my complaint and charges my client with the costs. In my excitement and distress, I omit the word "exception," the word of art which, if uttered, would have marked with unmistakable significance my continued disapproval. Probably the judge himself is doubtful about the merits of his ruling. The only thing he is not doubtful about is that he is making it against my protest. Will it be believed that here in New York, in this twentieth century, there are repeated judgments of the highest court, judgments of ancient origin, to the effect that for lack of the magic word "exception," an appeal, if taken, will be futile? I make no attempt to say whether these judgments were good law when they were rendered, or whether it is within the competence of the judges of to-day to sweep the rule aside without the aid of legislation. "Nought wot I of your quibbles." What I am sure of is that there must be a new



birth of a spirit that will stir our kingly anger when such absurdities are perpetrated.

The melancholy and surprising feature of it all is not merely that such things exist. The melancholy and surprising feature is that they do not raise a ripple upon the placid surface of contentment. The old conception of procedure as a sacred ritual to be followed with literal exactness comes down to us as an inheritance from a distant past. It has ingrained itself too deeply in the literature of the law and in the practice and the thought of lawyers and of judges to be uprooted in an hour. We smile, indeed, derisively when we read of these things in primitive times and among untutored peoples. We are blind to the vestiges of a like ritualism that abide with us to-day. When we heed them at all, we accept them as inevitable. Yet, of course, they are nothing of the kind. Take the nightmare of such a ruling as I have just instanced to your horror. If we cannot rid ourselves of its incubus in any other way, and if for some technical reasons which I need not enter into now, the form of an exception is desirable, a statute should be passed that an exception shall be implied and shall be inserted in the record at any stage of the appeal whenever it shall be made to appear to the satisfaction of the court that the appellant did not acquiesce in the ruling made against him.

Deep down and at bottom, such things survive because we have no adequate philosophy of law and are not interested to have one. We are mightily concerned about the symmetry and consistency of our rules, the cogs and weights and balances of the legal mechanism. We lose sight at times of the why and the wherefore, the realities behind the rules, the meaning of the work that we are doing day by day.

I could go farther if time permitted and prove how many of the deepest and most contentious problems of constitutional law, and particularly in the interpretation of the meaning of due process, have their origin in a false philosophy or in no philosophy at all. For by a philosophy of law (if I may borrow from what I have elsewhere written) I mean this and nothing more: the knowledge of what law is, how it grows, and whither it tends, a philosophy of genesis, of growth, of end and aim. These things we lack. The university must give them. It



must labor in season and out till all of us shall know that law is not a cadaver, but a spirit, not a finality, but a process or "becoming," not a clog upon the fullness of life, but an outlet and a means thereto, not a game, but a sacrament.

The jurists of older days used to speak of a Law of Nature, a changeless archetype upon which human laws are patterned and to which they must conform. Historians and philosophers have emptied upon the notion of such a law the vials of their ridicule till we have almost forgotten that behind the metaphor and the allegory, there is an inextinguishable truth. To-day a reaction has set in. "Does this mean," says Vinogradoff, referring to criticism of the doctrine, "does this mean that the law of nature or reason is a fanciful and absurd misconception? I am afraid," he goes on, "I am afraid the absurdity lies in supposing that a doctrine which has played such a part in the history of the world, which has appealed to minds of men of widely contrasting dispositions in entirely different circumstances, does not rest on solid foundations." The changeless archetype does not exist, but the vital truth remains that the search by judges for the yet unformulated rule is the search to give articulate expression in the standards of legal conduct to the manners and morals of the generation that they serve. Something, indeed, must be sacrificed to certainty and permanence when once the rule has been declared.

Even then, there is a point at which tolerance may cease to be a virtue. In reckoning the competing claims of certainty and justice, we must take stock of profit and loss and strike a balance of advantage. On every generation this duty rests afresh. To ignore it, to preach or practice a supine acquiescence, is not the path of true conservatism. It is to feed the fires of discontent and envy, to nourish impatience of all law as of something alien or cruel, to fill the multitudes with the thought that we are more concerned with our duties as the guardians of an esoteric mystery than with our larger and deeper duties as the preachers of a living truth.

"The apologist for outworn rules of law and institutions of law," says Dean Pound in his address last July before the American Bar Association, "always takes his stand behind the sanctity of the legal order. He postulates passive obedience to



the legal order as a duty, and deduces passive juristic acquiescence in whatever legal precepts obtain in the books for the time being." Such a spirit of obscurantism will find no shelter here. More and more the law must seek to refresh its strength by reaching down into the wells of moral truth and social virtue which are the sources of its energy. It is for the university to build the aqueducts that will bring these waters to our doors.

I know that there are moods and seasons in which teachings such as these may seem dissevered from realities. The principle of the division of labor has spread from industry to law; and young men about to labor in the modern law office with its departments and sub-departments may say to themselves cynically that they will have little need of jurisprudence. I hear of lawyers whose single task it is to prepare income tax returns. Others spend their days in making up the accounts of fiduciaries for submission to the Surrogate. Still others feel no deeper thrill than comes from the drafting of a corporate bond and deed of trust, with the dread possibility of foreclosure looming vaguely in the distance, the day of judgment when the bondholder will know whether there was negligence or prevision in drafting the terms of his security. I do not minimize the pangs of such a lot, though I have no doubt that they can be matched by like trials and tribulations that were known to the scribes and assistants of the conveyancers of older days. Examples such as these do not lower my theme. They do not blur my faith. The law, like every other calling, has its hours of drudgery when there is no other satisfaction for the spirit than the knowledge that with fidelity and with such powers as have been given us we are doing the day's work. But for all of us at times there are glimpses of something more. The forward movement of humanity carries us along with its resistless sweep so that our energies are well-nigh absorbed in keeping step with those about us. A turn in the road, and beyond the mass of moving men there comes to us a vision of the movement as a whole.

We are the passing instruments of a process that transcends our fleeting hour. None of us can now foretell the aspect of our legal system when the new Dean shall lay down the trust



assumed by him to-day. Still less can any of us foretell the aspect of the system that coming centuries may know. Many a pillar of justice must be raised, round upon round, before the perfect pediment shall crown the finished work. Small at best is the contribution that any one of us can make, yet we may be sure that it will count if only it is sound and true. In the cathedral of the law, as in the cathedrals of a living faith, the consecrated labors, the hopes and prayers and yearnings and aspirings of multitudes that have gone before us, some of them remembered, many more of them forgotten, have been built into the walls, and speak their message yet to the ears of the devout. Other things, indeed, have been built there too—errors and superstitions and cruelties and hatreds. The blight of decay is on them, and they crumble with the years. The walls stand firm withal. Spire and minaret and dome still struggle toward the skies.

Into new hands is now committed the guidance of this Law School with all its heritage of things attained, with all its hopes of things to come. The hands are new, but they are also firm and strong. Dean Jervev brings to his task an equipment rare in fullness and rich in promise. I have spoken of the points of contact between law and the other studies and pursuits that touch the lives of men. There is little danger that in the years to come these contacts will be ignored. A Dean who has felt the spell of ancient Greece and has taught the secret of her spell to others, will take no cramped or narrow view of law, but will know that in its deepest aspects it is one with the humanities and with all the things by which humanity is uplifted and inspired. To this liberalizing culture, earned in other fields of study, he adds a rich training in the field that he is to make his own. To the scholar's knowledge of the law in books he links the knowledge of its living needs that comes from varied practice at the bar. As he faces his new task, he has the confidence and support of his brethren of the bench and bar, of all who have at heart the honor and welfare of Columbia, of all who love justice and who dream of the coming of a day when none shall know the difference between her reign and the reign of human law.



# THOMAS NIXON CARVER

## EMPLOYEE AND CUSTOMER OWNERSHIP

Thomas N. Carver was born in Kirkville, Iowa, in 1865, and has been professor of political economy at Harvard since 1902. He is one of the eminent economists of this country and in the following address discusses a recent and important change in our economic conditions. This address was delivered at the forty-third annual convention of the American Electric Railway Association held at the Million Dollar Pier, Atlantic City, New Jersey, October, 1924.

THE World War produced a number of political revolutions in Europe. It has not yet produced an economic revolution. A number of old governments have been overthrown and new ones set up in their places. In some cases this resulted in a temporary economic débacle, but wherever industry has begun to function again it looks so much like that which existed before the revolution as to be difficult to distinguish from it. No significant improvement over the old forms of industry has yet been produced in any European country by any of these political revolutions. Their ultimate effects go no deeper than those that follow the ousting of one gang of politicians from the government of an American city and the substitution of another.

An economic revolution may follow as a result of a political revolution, but usually it does not. According to De Tocqueville, the one significant result of the French Revolution, which was primarily political, was that the peasants got possession of the land that had formerly been held in large estates. Up to the present (1924) that is the only economic improvement noticeable in Russia; yet the specific purpose of the Russian revolutionists was to use the power of government to force a new economic order upon the people. In spite of the most ruthless exercise of governmental power which the modern world has



ever seen, they have found the economic forces too much for them. As to the peasants and the land, the most that the revolution did was to facilitate a process that was already going on. More than that, the whole process was toward the private ownership of land, which is the direct antithesis of communism. In short, the economic forces brought about the ownership of land by the peasants in spite of rather than with the help of the new political power.

Economic revolutions usually proceed from causes that lie deeper than politics or government. The most that a government can do is to hasten or retard them, and even this is not always possible.

The only economic revolution now under way is going on in the United States. It is a revolution that is to wipe out the distinction between laborers and capitalists by making laborers their own capitalists and by compelling capitalists to become laborers of one kind or another, because not many of them will be able to live on the returns from capital alone. This is something new in the history of the world.

The labor movement in this country is so far in advance of that in any other country as to make comparison impossible. In European countries, including Great Britain, labor organizations and labor leaders are still pursuing antiquated methods that are comparable to the attempt of a man to lift himself by his boot straps. Here they are using the fulcrum of capital ownership and are actually lifting themselves into positions of well-being that amount to affluence in comparison with the conditions of European laborers. In European countries they are dominated by a psychology that was built up in a primitive and fighting stage of social development; here they are emerging from that stage and are beginning to think in constructive terms such as belong to a progressive and industrial stage. In European countries they are grasping at the shadow of political control, but have never and never will by that method put an ounce of the substance of economic prosperity into the hands of any laborer. In this country they have refused to be deceived by shadows and are rapidly gaining the real substance of prosperity.

Those belated minds that are still thinking in terms of the



primitive tactics of class war will not understand a single syllable of the last paragraph. The labor movement in this country is passing out of the stage in which leadership concerned itself mainly with the immediate tactics of battle. It is passing into the stage where it is concerning itself with the higher strategy of labor. This higher strategy takes account of the permanent economic forces and puts labor in a position where these forces work for it rather than against it. Instead of fighting capital they are beginning to recognize its power and to use it as an implement for their own improvement. There are at least three kinds of evidence that indicate roughly the extent to which laborers are becoming their own capitalists in this country; first, the rapid growth of savings deposits; second, the investment by laborers in the shares of corporations; third, the growth of labor banks.

Some idea of the financial power of laborers may be gained by a reasonable interpretation of the statistics regarding savings deposits, the assets of building and loan associations and the premiums of insurance companies. The total figures as given by the Department of Commerce are:

For savings deposits of all kinds on June 30,	
1923 .....	\$15,260,959,300
For total assets of building and loan associations .....	3,342,530,953
Add to these the total amount of life insurance premiums paid during the year of 1922 ....	2,336,444,586
Total .....	<hr/> \$20,939,934,839

Of course these savings are not all made by manual workers. Probably a relatively small proportion of the life insurance premiums are paid by them; but it is known that a fairly large proportion of savings deposits and payments to building and loan associations are by working people. Discount this as much as we dare, it is still a fair inference that the share of working people in the twenty billions of savings will at least be somewhere in the billions. Any day the laborers decide to do so, they can divert a few billions of savings to the purchase of the



common stock of industrial corporations, railroads, and public service companies, and actually control them. This is not necessarily a good policy, but it is within their power to do so if they decide that it is to their interest.

As to the investment of laboring people in the shares of corporations, some interesting figures are available, though the half has not yet been told. *The Financial World* recently sent a questionnaire to one thousand of the leading corporations of the country for the purpose of finding out how far the movement had progressed. Only 129 replies were returned. Of these 104 showed that employees below the grade of officials owned stock, though 118 of the replies stated that the management favored the plan. Of those that showed employee ownership, only 54 had offered special inducements to persuade employees to buy stock. What are known as public utility corporations showed the strongest tendency toward the plan.

The largest number of employee stockholders in any single industrial corporation is 50,020, owning 689,703 shares. Two others show 15,000 employee stockholders each, owning in one case 450,411 shares and 200,000 in the other. One smaller corporation reports that all its common stock is owned by its employees, but does not tell how it is distributed between the official class and the manual workers. Another reports that 12,000 of its 18,000 employees own stock. Still another reports that 3,000 of its 6,000 employees own two and a half million dollars worth of stock. A number of corporations that did not reply to the questionnaire are known to have a considerable number of employee stockholders.

Of the 171 public utility corporations listed, 33 replies were received, 32 of which report employee stockholders. One reports that 94 per cent of its employees own from 1 to 50 shares each; another that 149 of its 151 employees own stock; still another that 510 of its 543 employees own 5,211 shares. The most striking case, however, is a well known traction company all of whose 11,500 employees own stock amounting to 120,000 shares. One company reports that none but officers own stock.

Among those that did not reply to the questionnaire, the



Southwestern Bell Telephone Company has published in its annual report the statement that

"The Employees' Stock Purchase Plan, under which employees may subscribe for capital stock of the American Telephone and Telegraph Company on favorable terms continues in effect. On December 31, 1923, more than 5,900 employees were subscribing for 17,496 shares. Since the introduction of the existing plan in May, 1921, more than 14,000 employees have exercised their privilege of participation and a large percentage of employees of your Company already are shareholders of record. The Plan provides not only a means for acquiring a high grade investment stock but as well a means for promoting systematic saving."

A report on Employees' Thrift and Savings Plans, prepared by The Policyholders' Service Bureau of the Metropolitan Life Insurance Company, mentions a number of other companies in which the plan is in operation, in one of which—a large motor company—94 per cent of the employees are participating in the plan for employee stock ownership. In the large soap manufacturing company, 60 to 85 per cent of the employees own \$1,600,000 worth of stock. This report shows that a considerable number of companies that did not reply to the questionnaire of *The Financial World* are making use of the plan.

In the chapter on The Workman as Stockholder in "Labor's Money," by Richard Boeckel, the following information is given:

"Twenty-one thousand of the employees of Swift and Company, constituting more than one-third of the total number of men and women employed by the company, hold Swift shares with a total par value exceeding \$21,000,000.

"Ninety-four thousand of the employees of the American Telephone and Telegraph Company are making payment in instalments upon stocks subscribed under the company's profit sharing plan. Of this number approximately 46,000 hold shares upon which payment has been made in full.

"The E. I. du Pont de Nemours Company has distributed stock valued at \$20,765,999 among its employees since the inauguration of its plan. The total distribution in 1923



amounted to 14,484 shares with a total par value of \$1,448,400.

"Six thousand employees of the General Motors Corporation, one out of every twelve employed, hold 270,000 shares of common stock in that corporation, valued in excess of \$4,000,000.

"Employees of Sears, Roebuck and Company, own 55,700 shares in that enterprise, purchased through the employees' profit sharing fund, and 77,600 shares purchased outside the fund.

"Seventy per cent of the workers employed by the International Harvester Company hold common stock in the company, the aggregate value of their holdings exceeding \$5,000,000.

"Practically every workman employed by the Proctor & Gamble Company is a shareholder in the enterprise. Ninety per cent of the employees of the Firestone Tire and Rubber Company are stockholders. Every third man in the employ of the Goodyear Tire and Rubber Company holds one or more shares of stock.

"Other corporations in which employees hold large blocks of stock include the Standard Oil companies, the General Electric Company, the Westinghouse Electric and Manufacturing Company, the Eastman Kodak Company, the J. B. Stetson Company, the National Lead Company, the National Biscuit Company, the Republic Iron and Steel Company, and the Studebaker Corporation.

"The United States Steel Corporation, called by Samuel Untermyer, 'the greatest enemy to industrial peace in America,' was a pioneer in employees' stock distribution. The corporation was chartered in 1901. Its stock subscription plan was put into operation in 1903. In every year but one since 1903, the corporation has offered large amounts of its stock, bought in the open market, for subscription by its employees. In the beginning only preferred stock was offered, but offerings since 1916 have all been of common stock. Employees are allowed three years in which to pay for stock subscribed. An annual bonus of \$5, in addition to the regular dividends, is paid to each employee holding his stock for a period of five years. In recent years all the corporation's offerings to employees have been largely oversubscribed."



Owing to the meager reports it is impossible to give any satisfactory figures as to the total amount invested by American working men in the stock of the companies that employ them. About all that can be said is that it clearly runs up into billions of dollars.

In addition to the accumulation of savings by working people and the investment in the stock of corporations we have in this country a strikingly new phenomenon in the form of the labor bank. The general facts regarding them are well stated in "Labor's Money" by Richard Boeckel. According to a recent statement of Mr. Warren S. Stone of the Brotherhood of Locomotive Engineers, there are thirty labor banks now in existence in this country and many more are organizing. They already have resources of \$100,000,000 and are doubling these resources every year. The movement has already developed far enough to have its own organ, a well edited and prosperous journal, called *The Labor Banker*. Its editorials and articles compare favorably with those of other financial journals, and it shows a practical common sense, worthy of a disciple of Benjamin Franklin.

Where else in the world is it possible to-day to find anything corresponding to these labor banks?

If we add to the savings of laborers their investments in the shares of corporations and the funds in the labor banks, the large funds already in the treasuries of the labor unions, we shall begin to see that the financial power of the American laboring people is a factor to be reckoned with. All good citizens who are interested in the expansion of American industries should take account of this. Here is a new source of capital that may be so directed as to increase the productive power of the country and to create an additional demand for labor. Every time the laboring people of this country materially increase their savings and sound investments, they are helping themselves in two distinct ways. In the first place, they are gaining a new source of income. Every \$100 that brings 4 per cent adds \$4.00 a year to the saver's income. In addition to this, and perhaps more important, is its effect upon the labor market. The more capital there is seeking investment, the more easily can new and productive enterprises be financed.



The more new productive enterprises are properly financed and put in operation, the more jobs there are calling for men, the higher the wages of labor will be, and the less unemployment there will be. Laborers are beginning to appreciate this and to engage in what may be called the higher strategy of labor.

At this point we should stop to notice the essential difference between primitive fighting tactics and the higher economic strategy. In primitive warfare you gain in proportion as you thin out your enemies. The more uncomfortable you can make it for them, the fewer there will be of them and the better it will be for you. All our ancestors for thousands of years had to think in these terms. It will take some time to breed this idea out of our people. The clear, cold fact is that in the modern economic world you gain in proportion as you increase the number of your enemies on the market. Take the simple case of producer and consumer. When they are dickering over prices they are opponents. If they become irritated at one another, they are likely to fall back into the old way of thinking and try to treat each other as enemies. If the producers are dominated by this ancestral habit of thought, they will hate all consumers.

"Hates any man the thing he would not kill?"

It is, of course, obvious to the most elementary student of economics that what producers should do if they knew their own interest would be to try to increase the number of consumers. What they are very likely to do when they become angry is to try to thin them out. During the sugar shortage of the War, the cranberry growers on Cape Cod had difficulty in selling their cranberries. The scarcity of sugar almost destroyed the demand for cranberries; the reason being that people do not want cranberries, they want cranberry sauce, and cranberry sauce is not made of cranberries alone; it is made of cranberries *and* sugar. If one ingredient in that delectable compound is missing, the other is not of much use. Suppose the cranberry growers had been incensed because of the low price of cranberries and the high price of sugar, and had acted naturally, according to the principles of behaviorism. They would have started some sort of a war against sugar importers and refiners and would have made it uncomfortable for them, and



probably driven some of them out of business. Every student of economics knows that while this might be a perfectly natural procedure, it would not do cranberry growers any good; in fact it would do them harm. They would merely be engaged in the very common practice of biting off their own noses to spite their faces.

This is the principle that runs through all our economic life. Goods are not produced by labor; they are produced by labor *and* capital. If one ingredient is missing, there is not much demand for the other. Take for illustration a new farming community where the farmers have not yet equipped their farms with the necessary tools, buildings, livestock, etc. What they need is more capital. Of course it would be a fine thing if they had capital of their own. If they do not, the next best thing is to be able to borrow it. But if there is very little loanable capital to be had and very few lenders, they will bid against one another for that small amount and force up the rate of interest. It would be very natural for the farmer to be incensed against the money lenders and want to make war upon them, in accordance with their inherited psychology. This would discourage other money lenders from coming to such a community or sending their capital there. The farmers would clearly be doing themselves harm rather than good by behaving in this perfectly natural way. They must realize that what is natural is not always identical with what is wise or economic. If they behaved in accordance with economic wisdom, they would try to attract as many lenders and as much loanable capital as possible to that community. This would give them lower interest rates and a more abundant equipment for their farms. If they behaved in accordance with the primitive fighting tactics, they would tend to drive lenders of loanable capital out of the community. If they behaved in terms of higher strategy, they would offer such terms and inducements as would attract lenders of loanable capital.

In the case of labor and industries in general, the same principle follows. In proportion as capital is scarce relatively to the labor supply, in that proportion will capitalists be well off and laborers badly off. What the laborers really need is more capital. This is just as clear and definite as that the cranberry



growers in the former illustration needed more sugar, or the farmers more loanable capital. When the laborers begin to think in terms of the higher strategy, they will be trying to increase the quantity of capital. They can do this both by increasing their own savings and by encouraging savings on the part of other people. This is perfectly clear to any one who is not blinded by his primitive and inherited behaviorism. Many laborers as well as many highbrows are still blinded. Most of their self-appointed leaders are leading them by appealing to their inherited attitude toward enemies. Most of the trade union colleges that have thus far been started are led by people who still think in these primitive terms, and the policy of these colleges is to blind still further the laborers to the real economics of the situation.

In terms of the higher economic strategy, every encouragement of course should be given to laborers to organize their own banks and to run those banks as banks ought to be run, by safeguarding the capital of depositors and financing real, productive enterprises. But it is also to the interest of labor that other banks should be started to do the same thing. The more banks there are performing these two essential functions, the more capital there will be available for the financing of new and productive enterprises. If there is enough capital in the country and there are enough wise investors, no really productive enterprise will ever fail to secure adequate financial backing. When that happens, there will be so many productive enterprises in operation as to create a greatly increased demand for labor. This will put labor in a position of great strategic advantage. In other words, this is one of those cases where it is to the interest of labor to increase the number of its so-called enemies. In proportion as laborers learn to think in terms of economics rather than in terms of the cheap demagogics that is taught them by so many loquacious persons, they will begin to see the advantage of encouraging every possible accumulation of capital from every possible source.

In spite of the large number of cant, demagogic phrases with which discussions of labor banks are infused, there is evidence that large numbers of their less loquacious leaders are beginning to think in terms of the higher strategy. This has shown itself



in several non-financial policies, especially in policies that tend to decrease the supply of labor. The most outstanding and beneficent piece of legislation ever enacted in this country in behalf of labor was the restriction of immigration. This has tended to make manual labor scarce and hard to find and is the principal factor in the present high wages of such labor. A general system of popular education under which every young person who grows up has enough training to give him at least several choices of occupations is another factor. This means that relatively few people will be compelled to do manual labor, unless manual labor is well enough paid to attract them. The laborers of the country have therefore shown a due appreciation of the strategic advantage of a system of universal and popular education. Alcoholism generally tends to operate in the opposite direction, or to demote rather than promote people; in other words, it tends to congest the lower occupations, just as the system of popular education tends to deplete the lower occupations. Most labor leaders, especially the less loquacious ones, have shown the appreciation of this fact and have been for prohibition.

Democratic ideals and principles, under which every individual is encouraged to rise in the economic and political scale as far as his ability will permit him, is another factor. There are still a few benighted voices lifted in protest against the son of a laboring man deserting the ranks of labor. Of course it is very much to the interest of laborers that every one who can should desert the ranks of labor. The man who is capable of becoming an employer of labor and who deliberately chooses to remain a wage worker is doing definite harm to labor. He is competing with other laborers for jobs when he might be making other jobs for them as an independent business man. This is as clear as anything well could be, but there are fewer labor leaders who see this point than there are who see the advantage of restricting immigration or the advantage of a popular educational system. However, some of them see it perfectly clearly. Whether they do or not, the democratic traditions of this country are operating in the direction of wisdom.

If our labor leaders and those who are trying to become labor leaders will continue to think and act more and more in



terms of the higher economic strategy, decreasing the supply of those forms of labor that are over-supplied, increasing the supply of capital and business management, favoring policies that will expand industry and so make it possible for laborers to become their own capitalists, there is scarcely any limit to the prosperity that may come to our laboring classes without a single essential or fundamental change in the institutions of the country or in the basic principles of the economic system. We can have what to all intents and purposes might be called a practical equality of prosperity without surrendering the principle of voluntarism under which we are now proceeding. We shall have much greater prosperity for all classes than can possibly be secured under any system of compulsion such as they are trying in Russia and such as the British Labor Party, if it lives up to the previously published opinions of its leaders, will eventually try.

It has long been the dream of social reformers that laborers would own the shops and factories in which they work. There are reasons for doubting that this would be as desirable from the standpoint of the workers as some have imagined. It is true that the workers would get the profits, if there were any, but it is equally true that they would also bear the losses if there were any. On the whole, losses are almost, if not quite as common as profits.

Granting, however, that it would be desirable for the workers to own the establishments in which they work, there are three ways—two dishonest or revolutionary, and one honest—by which they may acquire them. The first and most direct of the dishonest methods is to seize them by force. This is the method openly advocated by the so-called “direct actionists” and practiced by the Bolsheviks. Aside from the dishonesty of it, this method has serious drawbacks. The government must first be overthrown. Even then, the situation is not secure. Though this plan may put the present property in the hands of the worker, it cannot renew the property when it is worn out. There will be no new property to seize. People who never had enough thrift and forethought to buy and pay for property in the first place seldom have enough to keep the property up after they have gained it in some other way. When it runs down,



there will be nothing to steal with which to keep up repairs. This the Bolsheviki early discovered to their discomfiture.

Another dishonest way is to gain possession of the government and use its power to dispossess the present owners. This is frankly advocated by some of the Guild Socialists. It is to be done under the form of constitutional government, instead of in defiance of government. In the end, it will make little difference whether the force that is used to take property from one set of owners and give it to another is wielded by persons outside the government or by a perversion of government power.

If laborers want to own the shops in which they work, there is an honest way. It is the way by which they may own the houses in which they live, their clothes, their household furniture, or anything else that they have not themselves made. That is, to buy and pay for them as other people do. Even if they could take possession of the shops by force, they could only get repairs and replace wornout plants by this method. There is no sound reason why they should gain possession of existing shops in any other way.

One of the strongest examples of the perverseness of the human mind is the tendency to misstate, or to accept without challenge, the misstatement of others, regarding the relation of the worker to his tools. One of these misstatements is that the industrial revolution of the 18th century deprived manual laborers of the ownership of their tools. Of course it is impossible to deprive a person of ownership of something which he never owned. The new tools that came into existence with steam-driven machinery never were owned by manual workers. For the first time in history they are in process of becoming in this country largely the property of those who work with them. Another misstatement is that through government ownership, the workers would become, in effect, the owners of the plants in which they work. The employees in the city hall do not own the city hall; the public school teachers do not own the school buildings. The employees of the Federal Government do not own the buildings or the navy yards in which they work. Moreover, the employees themselves, in these publicly owned plants do not feel that they are working for themselves or show any more interest in their work than do the employees



in capitalist owned plants. A third misstatement is to the effect that property in tools, machines and industrial plants differs fundamentally from property in dwelling houses, furniture, clothing, cooking utensils and other things commonly classed as consumers' goods. If it is found desirable that any class should own its own dwelling houses, household furniture, or clothes, the method of purchase is open. If it is found desirable that another class should own the land, livestock, and farming implements with which it works, the method of purchase is alike open. If it is found desirable that still another class should own the factories, shops, tracks or rolling stock with which it works, the method of purchase is open in this case also. When these various people buy the property in which or with which they work, they acquire a genuine ownership, and they will at once realize a significant difference between this and government ownership.

Another misstatement is to the effect that modern industrial plants are too big to be owned by their own workers. The joint stock form of business organizations was not designed primarily for the benefit of manual workers, but it would not have been much different from what it now is if it had been. Neither State Socialism, Guild Socialism, Sovietism, nor the ordinary coöperative society presents a plan of organization so well suited to the needs of workers who desire to own their own plants as does the Joint Stock Corporation.

An interesting bit of practical experience with this form of organization was furnished many years ago by the Oneida Community. This community was formerly, as most of you know, a communistic society of the most idealistic sort, having been founded by a religious group who were known as perfectionists, and who believed that, for them, the Kingdom of God had already arrived. It continued as a communistic society for about thirty years and then changed over to a New York State joint stock corporation with a capital of \$600,000, on a plan agreed to by all the members, whereby the shares in the new corporation were divided among men and women equally and according to years of membership in the community.<sup>1</sup> The business

<sup>1</sup> From a letter to the writer by S. R. Leonard, Vice-president of the Oneida Community, Limited.



of the community has grown to such magnitude that only a fraction of the work is done by actual members. However, they have been selling common stock to employees for a number of years. In 1913 the stockholders set aside for distribution 800 shares, par value \$25 a share. Each year since then stockholders have made similar motions, the number of shares varying according to circumstances. This year the amount voted was 8,000 shares.

Here was a communistic society that was actually succeeding. Its business was growing and prospering. Yet its members decided that the joint stock form of organization fitted their plans better, and apparently fulfilled their ideals satisfactorily. It is mentioned as an illustration of the writer's belief that this form of ownership supplies the American laborer with all he needs if he seriously desires to share in the ownership of the plant in which he works.

As indicated above, the public service corporations showed a higher tendency than any other single class toward employee ownership. One reason for this is probably because in no other class of business does good will count for so much; or perhaps it would be better to put it thus: that in no other class of business does the ill will of the public prove so dangerous. "Where the carcasses are, there will the eagles be gathered together." The politician, from his high aerial lookout, is always watching for evidences of popular discontent. Absentee ownership, whether of land or other property, is universally a source of dissatisfaction and irritation. In the case of absentee landlordism, it has never yet failed to produce friction and hostility between the resident population and the absentee land owners, but this result and the conditions which produce it are not peculiar to agricultural people. They are found in the case of urban property and urban business, as well as in the case of rural property and rural business. We may approve or disapprove but we cannot deny the fact that absentee owners of any business furnish the conditions on which the demagogue thrives. In the case of public service corporations he has a peculiar hold upon the business. In a democracy we cannot get rid of the politician. The only alternative is, so far as possible, to substitute resident ownership for absentee ownership.



The form of resident ownership which is most disconcerting to the politician is that which is known as employee and customer ownership. When the employees of a traction company own a large part of the business, the politician cannot appeal to the feeling between capital and labor, because the laborers are their own capitalists. If there were no other reason in favor of employee ownership this would be sufficient to justify it. Customer ownership in other cases, such as telephone companies, accomplishes the same purpose. The attempt to combine employee with customer ownership may have its difficulties. The interests of customers and employees are sometimes in conflict. This may lead to complications and stimulate party politics among the shareholders, but we may well run the risk of this if we can only avoid the menace of that bane of every constructive business—the cheap politician.

Another reason why public service corporations are suitable for the experiment of employee ownership is that the product is locally consumed and the employees therefore can easily visualize the business problem of marketing. In a sense, every street car conductor is a salesman for the street car company. He is in direct contact with the customers of the company. If he is not only a worker but a part owner in the company, he can be expected to become a somewhat better salesman, or at least to be somewhat more eager to please the public with whom he is in daily contact. The workers in a shop who produce a commodity that is not consumed locally but sold over the entire world are not likely to visualize quite so clearly the strictly business problems which the company faces. There is some slight danger that employee ownership in a case of this kind might result in short-sighted policies unless the employees are unusually intelligent. Even this danger could probably be overcome by taking somewhat greater pains to acquaint the employee shareholders with the business problems involved in marketing the product than would be necessary if the shares were all held by a few expert or far-sighted business men.



# FREDERIC RENÉ COUDERT

## OUR CLIENTS

Speech of Frederic R. Coudert at a dinner given to Benjamin Silliman by the Bar of New York and Brooklyn to commemorate the sixtieth anniversary of his admission to the Bar. Mr. Coudert responded to the toast, "Our Clients."

MR. PRESIDENT AND OTHER VENERABLE GENTLEMEN:—I am grateful to you for this undeserved honor. I have few reminiscences. I do not know anything about the past, very little about the future, and less about the present. I had hoped that I would have some comfort in the companionship of my brother Carter [James C. Carter], but when he got up claiming to be sans teeth, sans eyes, sans taste, sans everything, when he invoked the favor of the audience and placed his plea wholly upon age, I felt that I was alone here to plead the privilege of infancy and to invoke the benefit of the statute. [Laughter.]

I do not know, I repeat, a great deal about the great men who have passed before us. I have no opinion to speak of. In fact, my opinion on that subject is vague, and its value easily susceptible of illustration. One gentleman to-night mentioned a great advocate, George Wood. I can remember, looking back to early boyhood, that venerable figure and recall speaking to one of his contemporaries about him. He said, "Yes; a client of mine got an opinion from him once." "Well," I said, "how was it done; how much did he charge?"—for even in those days the professional instinct asserted itself. [Laughter.] "Well," he said, "my client went to him and said, Mr. Wood, I would like to have your opinion on these papers." "Give me the papers; come back to-morrow." And he went back the next day and Mr. Wood said, "Fifty dollars," and nothing more. The client was intelligent, and assumed that he should pay him



that sum, which he did. "What about my papers?" he said. "They are not worth a damn," said he. [Laughter.]

If this is a sample of the methodical business practices of the ancient Bar, I am not surprised that our learned and distinguished brother should have attained prosperity and distinction both together. I attribute it rather to that, than to the happy accident of his sleeping in the solitudes of Brooklyn of which you have spoken.

That this is a great day for Brooklyn we all realize. The hordes of Brooklyn men who have appeared to-night, drawn by the prospects of this feast and the allurements—they were bound to be deceived—the allurements of a speech apiece, are such as have never been known before. The first arrangement for the program of this evening's speech-making was the best. I understood that our distinguished friend was to be partitioned. You will observe that out of respect to him I adopt the word usually applied to large communities. One was to have "Our Brother, his Mental Qualities," another his "Moral Qualities," another his "Stomach," and so on. It was found that there was enough of him to go around, but the difficulty was that every Brooklyn man wanted at least twenty minutes and a computation of at least eighty speeches at twenty minutes could easily be made. Thus it had to be abandoned, and the desultory course which we have taken to-night was perforce selected. You now understand the unhappy faces of our Brooklyn friends, and may give them your sympathy. [Laughter.]

Let me tell them, however, that the manufacture of a speech is never in vain. Either they can find a client who will take it upon reasonable terms, or they may discharge it on some future occasion.

I read but recently a story in Plutarch's "Morals," a work that I have no doubt Mr. Silliman reads in his leisure moments. There was a certain officer of Thrace, who, taking a dislike to a dog, fired a stone at him. He missed the object, but struck his mother-in-law. [Laughter.] "It was not so bad a shot," he philosophically exclaimed. I leave my Brooklyn friends to draw the moral.

As to speaking for our clients, I cannot be dictated to in that fashion. What have our clients done for us to-night that



we should do this for nothing for them? If there be a weak spot in the constitution and mental organization of Mr. Silliman, I fancy it had been an undue yielding to the caprices of clients. Let us be braver and bolder and stronger than he. Let them get all they are entitled to, and very little of that. [Laughter.] They are certainly not entitled to be admitted to our secret rites, nor to pervade this hall and its atmosphere with their uninvited and gratuitous presence.

Much has been said to-night to show that our profession of to-day, and our Bar, are equal to the profession and the Bar of the past. But, is it claiming more than we are entitled to if we insist that the Bar never has had as much honor, as much talent, as much industry, considering the vastly increased numbers in its ranks and the vastly increased temptations to-day? It is idle to talk of a great body remaining stationary and immovable. The Pyramids of Egypt may do that, but no living organization ever will. We are improving or we are going back. It was a beautiful thought of Pascal that the human race was like a child, always growing, but never growing old. So of every large and organized body of learned and intelligent men.

And so especially it is with our profession—the profession of professions—if we do not keep ahead of the time we go back. The examples that we have in these older men, all stimulate us to nobler effort, perhaps, and teach after all, that in the record of an upright and honorable life, there is much to stimulate even the baser motives of self-interest. But as the great mass of our people are being instructed, so should we rise with and above the rest, and although each one of us will not deserve, as few of us ever can, the eulogies that pour from our hearts through our lips to-night in the presence of a beloved and honored brother, each man may do his best in his own sphere at least, so that some of us who may remain behind him shall not be unworthy to stand by the monument that shows where he rests, and say one kindly and loving word for him.

I am exceeding my time, but no one will follow more sincerely the echo of what was said to-night of Mr. Silliman. I am not prepared like Brother Carter to recite, in advance, his obituary notice. Far distant be that day! Many of us will



fall by the wayside before he is gathered to his fathers. But we will continue to honor and to love him, and to honor and love those younger brethren who grow in honor by our side, for we know the increased and accumulated weight of daily temptations that press upon their shoulders. For him I can only say, in closing, that I know that I am giving voice to what you all feel—Deal with him gently, gentle Time. [Great applause.]



# CLARENCE DARROW

## A PLEA FOR MERCY

Clarence Darrow, one of the best-known members of the legal profession, was born in Kinsman, Ohio, in 1857. He has been identified with many prominent cases, notably cases against monopolies and in defense of labor leaders. His name has been brought before the public especially as counsel for Loeb and Leopold on trial for murder in August, 1924, and as counsel for the defense in the Scopes trial.

Mr. Darrow has long been a crusader for the reform of our methods of dealing with criminals and especially in connection with the agitation for the abolition of capital punishment. As a crusader, his opinions have naturally roused great discussion and none, perhaps, more than his plea for mercy for Loeb and Leopold.

The entire plea occupied one hundred and twenty pages of printed matter and, of course, discussed exhaustively the evidence offered. The conclusion of the speech only is here reprinted. It is undoubtedly a masterpiece of pleading and a denunciation of the futility of capital punishment.

Now, your Honor, I have spoken about the war. I believed in it. I don't know whether I was crazy or not. Sometimes I think perhaps I was. I approved of it; I joined in the general cry of madness and despair. I urged men to fight. I was safe because I was too old to go. I was like the rest. What did they do? Right or wrong, justifiable or unjustifiable—which I need not discuss to-day—it changed the world. For four long years the civilized world was engaged in killing men. Christian against Christian, barbarian uniting with Christians to kill Christians; anything to kill. It was taught in every school, aye in the Sunday schools. The little children played at war. The toddling children on the street. Do you suppose this world has ever been the same since then? How long, your



Honor, will it take for the world to get back the humane emotions that were slowly growing before the war? How long will it take the calloused hearts of men before the scars of hatred and cruelty shall be removed?

We read of killing one hundred thousand men in a day. We read about it and we rejoiced in it—if it was the other fellows who were killed. We were fed on flesh and drank blood. Even down to the prattling babe. I need not tell your Honor this, because you know; I need not tell you how many upright, honorable young boys have come into this court charged with murder, some saved and some sent to their death, boys who fought in this war and learned to place a cheap value on human life. You know it and I know it. These boys were brought up in it. The tales of death were in their homes, their playgrounds, their schools; they were in the newspapers that they read; it was a part of the common frenzy—what was a life? It was nothing. It was the least sacred thing in existence and these boys were trained to this cruelty.

It will take fifty years to wipe it out of the human heart, if ever. I know this, that after the Civil War in 1865, crimes of this sort increased, marvelously. No one needs to tell me that crime has no cause. It has as definite a cause as any other disease, and I know that out of the hatred and bitterness of the Civil War crime increased as America had never known it before. I know that growing out of the Napoleonic wars there was an era of crime such as Europe had never seen before. I know that Europe is going through the same experience to-day; I know it has followed every war; and I know it has influenced these boys so that life was not the same to them as it would have been if the world had not been made red with blood. I protest against the crimes and mistakes of society being visited upon them. All of us have a share in it. I have mine. I cannot tell and I shall never know how many words of mine might have given birth to cruelty in place of love and kindness and charity.

Your Honor knows that in this very court crimes of violence have increased growing out of the war. Not necessarily by those who fought but by those that learned that blood was cheap, and human life was cheap, and if the State could take it



lightly why not the boy? There are causes for this terrible crime. There are causes, as I have said, for everything that happens in the world. War is a part of it; education is a part of it; birth is a part of it; money is a part of it—all these conspired to compass the destruction of these two poor boys.

Has the court any right to consider anything but these two boys? The State says that your Honor has a right to consider the welfare of the community, as you have. If the welfare of the community would be benefited by taking these lives, well and good. I think it would work evil that no one could measure. Has your Honor a right to consider the families of these two defendants? I have been sorry, and I am sorry for the bereavement of Mr. and Mrs. Frank, for those broken ties that cannot be healed. All I can hope and wish is that some good may come from it all. But as compared with the families of Leopold and Loeb, the Franks are to be envied—and everyone knows it.

I do not know how much salvage there is in these two boys. I hate to say it in their presence, but what is there to look forward to? I do not know but what your Honor would be merciful if you tied a rope around their necks and let them die; merciful to them, but not merciful to civilization, and not merciful to those who would be left behind. To spend the balance of their days in prison is mighty little to look forward to, if anything. Is it anything? They may have the hope that as the years roll around they might be released. I do not know. I do not know. I will be honest with this court as I have tried to be from the beginning. I know that these boys are not fit to be at large. I believe they will not be until they pass through the next stage of life, at forty-five or fifty. Whether they will then, I cannot tell. I am sure of this; that I will not be here to help them. So far as I am concerned, it is over.

I would not tell this court that I do not hope that some time, when life and age have changed their bodies, as they do, and have changed their emotions, as they do—that they may once more return to life. I would be the last person on earth to close the door of hope to any human being that lives, and least



of all to my clients. But what have they to look forward to? Nothing. And I think here of the stanza of Housman:

Now hollow fires burn out to black,  
And lights are fluttering low:  
Square your sholders, lift your pack  
And leave your friends and go.  
O never fear, lads, naught's to dread,  
Look not left nor right:  
In all the endless road you tread  
There's nothing but the night.

I care not, your Honor, whether the march begins at the gallows or when the gates of Joliet close upon them, there is nothing but the night, and that is little for any human being to expect.

But there are others to consider. Here are these two families, who have led honest lives, who will bear the name that they bear, and future generations must carry it on.

Here is Leopold's father—and this boy was the pride of his life. He watched him, he cared for him, he worked for him; the boy was brilliant and accomplished, he educated him, and he thought that fame and position awaited him, as it should have awaited. It is a hard thing for a father to see his life's hopes crumble into dust.

Should he be considered? Should his brothers be considered? Will it do society any good or make your life safer, or any human being's life safer, if it should be handed down from generation to generation, that this boy, their kin, died upon the scaffold?

And Loeb's, the same. Here are the faithful uncle and brother, who have watched here day by day, while Dickie's father and his mother are too ill to stand this terrific strain, and shall be waiting for a message which means more to them than it can mean to you or me. Shall these be taken into account in this general bereavement?

Have they any rights? Is there any reason, your Honor, why their proud names and all the future generations that bear them shall have this bar sinister written across them? How many boys and girls, how many unborn children will feel it? It



is bad enough as it is, God knows. It is bad enough, however it is. But it's not yet death on the scaffold. It's not that. And I ask your Honor, in addition to all that I have said, to save two honorable families from a disgrace that never ends, and which could be of no avail to help any human being that lives.

Now, I must say a word more and then I will leave this with you where I should have left it long ago. None of us are unmindful of the public; courts are not, and juries are not. We placed our fate in the hands of a trained court, thinking that he would be more mindful and considerate than a jury. I cannot say how people feel. I have stood here for three months as one might stand at the ocean trying to sweep back the tide. I hope the seas are subsiding and the wind is falling, and I believe they are, but I wish to make no false pretense to this court. The easy thing and the popular thing to do is to hang my clients. I know it. Men and women who do not think will applaud. The cruel and thoughtless will approve. It will be easy to-day; but in Chicago, and reaching out over the length and breadth of the land, more and more fathers and mothers, the humane, the kind and the hopeful, who are gaining an understanding and asking questions not only about these poor boys, but about their own—these will join in no acclaim at the death of my clients. These would ask that the shedding of blood be stopped, and that the normal feelings of man resume their sway. And as the days and the months and the years go on, they will ask it more and more. But, your Honor, what they shall ask may not count. I know the easy way. I know your Honor stands between the future and the past. I know the future is with me, and what I stand for here; not merely for the lives of these two unfortunate lads, but for all boys and all girls; for all of the young, and as far as possible, for all of the old. I am pleading for life, understanding, charity, kindness, and the infinite mercy that considers all. I am pleading that we overcome cruelty with kindness and hatred with love. I know the future is on my side. Your Honor stands between the past and the future. You may hang these boys; you may hang them by the neck until they are dead. But in doing it you will turn your face toward the past. In doing it you are making it harder for every other boy who in ignorance and



darkness must grope his way through the mazes which only childhood knows. In doing it you will make it harder for unborn children. You may save them and make it easier for every child that sometime may stand where these boys stand. You will make it easier for every human being with an aspiration and a vision and a hope and a fate. I am pleading for the future; I am pleading for a time when hatred and cruelty will not control the hearts of men. When we can learn by reason and judgment and understanding and faith that all life is worth saving, and that mercy is the highest attribute of man.

I feel that I should apologize for the length of time I have taken. This case may not be as important as I think it is, and I am sure I do not need to tell this court, or to tell my friends that I would fight just as hard for the poor as for the rich. If I should succeed in saving these boys' lives and do nothing for the progress of the law, I should feel sad, indeed. If I can succeed, my greatest reward and my greatest hope will be that I have done something for the tens of thousands of other boys, for the countless unfortunates who must tread the same road in blind childhood that these poor boys have trod—that I have done something to help human understanding, to temper justice with mercy, to overcome hate with love.

I was reading last night of the aspiration of the old Persian poet, Omar Khayyam. It appealed to me as the highest that I can vision. I wish it was in my heart, and I wish it was in the hearts of all.

So I be written in the Book of Love,  
I do not care about that Book above.  
Erase my name or write it as you will,  
So I be written in the Book of Love.



# JOHN WILLIAM DAVIS

## OUR BRETHREN OVERSEAS

John W. Davis was born at Clarksburg, W. Va., 1873, graduated from Washington and Lee University in 1892, and received his law degree there in 1895. He was member of Congress 1911-1913, resigning to become Solicitor-General of the U. S. He was ambassador to Great Britain 1918-1921, distinguishing himself in this difficult position by the unusual quality and felicity of his public addresses. In 1924 he was the Democratic candidate for President. The following address was delivered before the American Bar Association.

A SOUND rhetorical canon forbids the introduction of any address by an apology. No apology, however, is necessary to preface the statement that what I shall have to say to you has no tangible connection with any of the grave perplexities that vex the world to-day. I shall call upon you to solve no riddles and demand no action within the competence of this Association. With the hope that you may be willing to forgo consideration of international and domestic problems for lighter if more familiar things, I shall ask you to listen to some random observations on the organization of the legal profession in England and the administration of English justice. An American in Great Britain faces no sudden shock from an unfamiliar tongue and the activities of political, commercial and professional life are easily translated into terms of his own experience; yet with all due allowance for these essential facts, there is enough of novelty to engage his interest and reward his study.

Any effort to picture the life of an English lawyer begins almost of necessity with the Inns of Courts, those venerable institutions called by Jonson, "the noblest nurseries of liberty and





JOHN W DAVIS







humanity in the Kingdom," or as a less noble poet writes, in parody of Milton:

Yet not the more,  
Cease I to roam through Elm or Garden Court,  
Fig Tree or Fountain side or learned shade  
Of King's Bench Walk, by pleadings vocal made;  
Thrice hallowed shades! Where slip-shod Benchers muse,  
Attorneys haunt and Special Pleaders cruise.

Entering from the Thames embankment alongside the garden made famous by the plucking of the white rose and the red, the visitor when enfolded by the quiet precincts of the Temple, seems to walk at once in a world apart. The ancient dining hall of the Middle Temple, graced in its day by Shakespeare and his Virgin Queen, stands as it has done for centuries, filled with its long rows of tables for the students and members of the Inn, and its high table of mighty English oak for the reverend Benchers. Across Temple Lane rise the buildings of the inner Temple, less venerable in time by reason of fire, yet preserving nevertheless traditions running to the year 1327, when the Knights Hospitalers of St. John of Jerusalem farmed the manor and place of the New Temple to the professors and students of the day. Here, too, is the old Temple church, consecrated in 1185 by Heraclius, Patriarch of Jerusalem, where the organ selected by Jeffery of the Bloody Assizes still discourses its music to the sculptured knights upon the pavement and the pious lawyers in their pews.

Through busy Fleet Street and up Chancery Lane the way lies to the stately buildings of Lincoln's Inn adjoining Lincoln's Inn Fields, of which a contemporary wrote in 1735 that "from a heap of rubbish and the receptacle of ruffians and vagabonds is made one of the finest squares in the world." The place has had its turbulent history. In 1629, for instance, a royal messenger holding a warrant of arrest, found his man in Lincoln's Inn Gardens, but forbore to touch him out of respect for the place; but when the messenger had quietly gone into the street, about thirty gentlemen of the Inn, who felt that his very presence had been an insult to their privilege, "fetched him into the house, violently pumped him, shaved him and disgracefully



used him." Here, too, stood the old Blue Boar Inn at which Cromwell and Ireton, disguised as robbers, awaited the soldier who carried sewn into his saddle a letter from Charles the First to his Queen. While the soldier was detained within, they cut open the saddle, extracted the letter containing certain proof of Charles' incurable and incessant treachery, and sent the messenger on his way unwitting of his loss. And then crossing Holborn, one comes to Gray's Inn to tread the pavement where the weary feet of Francis Bacon paced so many a round after his fall from place and power, and where, within sight of his statue in the outer court, one may still be shown the sacramental cup from which his sad lips drank.

The impression of age and antiquity which such a journey leaves is not lost even when one enters the Royal Court of Justice, for though built only in 1886 the design of the architect and the smoke of London have combined to make the buildings seem years older than they are, and in the hurrying figures of gowned and bewigged barristers and the red-robed judges on the Bench, one recognized forms familiar for centuries in legal portraiture. No degree of intimacy with the traditions which cluster round these halls or with the costume of the dwellers there can drive from the mind of the American visitor the contrast with his less ancient temples and the highly informal garb of their priests and acolytes. Only when he has tarried to witness the courts in action does this sense of the unusual wear away; for then he finds the rôles of law invoked are those upon which he was nurtured, the examination of witnesses is conducted in the manner and by methods he has himself employed, and judgment is rendered in language drawn from the very precedents he has been taught to revere. As he watched the triumphant victor or disgruntled vanquished leave the arena he feels, to paraphrase John Bunyan, that "but for the grace of God" and the lack of a wig and gown there might he go himself.

"The best prospects," said Disraeli, "that the law holds out to a man is port and bad stories until he is fifty and then a peerage." Two of these rewards are obviously beyond the present reach of the American lawyer, no matter on which side of fifty he may find himself. It must be admitted that there are other differences between the lawyers of England and our-



selves hardly less definitive. Of these the most pronounced perhaps are those which spring from the methodical, and from the American point of view, the somewhat rigid organization of the legal profession itself. In large part this organization is the result of slow-moving historical causes, but it springs also from that innate love of established order and custom which is one of the strongest instincts of the English race. The rank and precedence which obtain are not based upon any innate sense of superiority or inferiority among men—indeed the underlying philosophy of the English state is as profoundly egalitarian in point of human rights as that of America—but there is a desire to know and a willingness to recognize the exact limit of the sphere to which one has been assigned by the choice or fate that is not felt in a newer society. The table of legal precedence accordingly is quite definite. It begins at the apex with the Lord Chancellor as the highest legal dignitary of the Kingdom and descends by successive gradation as follows:

The Lords of Appeal;

The Lord Chief Justice of England;

The Master of the Rolls;

The Lords Justices of the Court of Appeal (according to seniority of appointment) and the

President of the Probate, Divorce and Admiralty Division;

Judges of the High Court (according to seniority of appointment);

The Judge of the Arches Court;

The Attorney-General;

The Solicitor-General;

The Judge of the County Courts;

King's Counsel, and such as have patents of precedence;

The Recorder of London;

The Common Sergeant of London;

Doctors of Civil Law;

Doctor of Laws;

Barristers-at-law;

Proctors;

Solicitors.



Among barristers, there is not only the distinction which prevails between the mere utter barrister in his stuff gown and the King's Counsel in his glistening silk, but there is precedence based upon the date of one's call to the Bar, which is not entirely devoid of consequence in professional life. No King's Counsel can hold a brief for the plaintiff on the hearing of a civil cause, in the High Court, Court of Appeal or House of Lords, without a Junior, and it is quite unusual that he should do so even when appearing for the defendant in a civil case or upon a criminal trial. While among those of lesser rank, no barrister should accept a junior brief for a barrister junior to himself in point of call, and as the table shows any and every barrister outranks all his legal brethren of the lower branch. Indeed, some years ago a solicitor rather bitterly remarked that "a barrister is to a solicitor what a peer is to a law stationer." Among solicitors themselves a greater equality obtains; or perhaps it would be fairer to say that their struggle for existence is neither helped nor hampered by questions of relative rank.

Mere questions of precedence aside, however, the whole scheme of legal life in Great Britain is built upon the hard and fast division between the barrister on the one hand and the solicitor on the other. It is a distinction which tradition, custom and positive law combine to maintain inviolate and inviolable; and to say that is analogous to the difference with which we are familiar between the "court lawyer" and the "office lawyer" tells but half the story. Pollock and Maitland assert that historically considered "these two branches have different roots; the attorney represents his client and appears in his client's place, while the countor speaks in behalf of a litigant, who is present in court either in person or by attorney." This was certainly true as far back as 1286 for recognized countors or advocates were already performing their function when the Statute of Merton granted to every free man the right to be represented at the county, tything, hundred, wapentake and minor courts, by an attorney, whose right, however, to address the court seems to have been doubtful. Under Edward the First, the English Justinian, a definite class of English lawyers makes its appearance, and toward the close



of the thirteenth century we find statutory evidence of their respective functions in an ordinance passed by no lesser potentates than the Mayor and Aldermen of London, forbidding any countor to practice also as an attorney.

The separation thus begun between the two orders continues to this day and shows itself not only in function but in education, in dress, in legal status, in relationship to clients, in compensation, and not least of all, in eligibility for public office. Thus a barrister educated at one of the Inns of Court and admitted by its benchers to the Bar enjoys in his wig and gown a singular immunity from legal restraint. He is not an officer of the court, and the court neither admits him to practice nor has power to disbar him from his profession. He takes no oath of service, nor even of allegiance, for an alien may enjoy full professional status at the English Bar. No tax is levied upon his right to practice and no statute undertakes to regulate the compensation which he shall receive. On the other hand he cannot of his own motion and without previous instruction of a solicitor, commence, carry on or defend any action except when retained in open court by a criminal in the dock. He has no direct access to his client, and can neither sue the latter for his fees nor be sued in turn for any negligence in the performance of his duties. He must accept all briefs tendered to him in any of the courts in which he professes to practice when accompanied by the offer of a proper fee, yet can associate no partner with himself to divide his labors and responsibility. The functions which he is permitted to perform fall into three classes, i.e.—advising upon questions of law; drafting pleadings, conveyances and other documents; and acting as an advocate in the courts. So long as he is of the junior Bar he may receive pupils in his Chambers; but once made King's Counsel this and the labors of drafting are beneath his professional dignity. To him and to him alone are open all the judicial offices of the Kingdom as well as the great political posts of Lord Chancellor, Attorney General and Solicitor General.

How different the lot of the solicitor! The law, it is true, gives him a quasi monopoly of litigation by ordaining that no one person but a properly enrolled solicitor or a litigant in his



own person can "sue out any writ or process, or commence, carry on, solicit or defend any action, suit, or any other, proceeding in any court in England, or act as a solicitor in any cause, matter or suit, civil or criminal." But it accompanies this grant with a degree of statutory regulation and legal supervision to which perhaps no other profession is anywhere subject. From professional birth to legal death, the solicitor moves in the shadow of the law he serves. As an officer of the court, he must preface his admission by an oath of faithful service, and preserve his status from year to year by taking out an annual certificate on which a tax is paid. The signature of the Master of the Rolls is necessary for his admission but the Law Society which has the rolls in its keeping, may oust him from his calling for any act of professional misconduct or personal immorality. His fees are rigidly prescribed by none too generous statute, and unless he has sheltered himself behind the advice of some presumptively omniscient barrister, damages may be recovered from him for any negligence. He must be a British subject; and while, as the present Prime Minister has brilliantly demonstrated, he may attain the highest political office in the state, yet among legal offices only the most petty are open to him, and his voice may be heard only in the Chancery Chambers, the Bankruptcy Court of First Instance, County Courts and minor tribunals.

The choice between the one life and the other is one that cannot be made at convenience. It must be made at setting out, for there is no part of the road which the neophytes of the two professions travel together. For the intending barrister the initial step is enrollment at one of the Inns of Court. There is an old bit of doggerel for the guidance of the student which runs thus;

The Inner for the rich man,  
The Middle for the poor man,  
Lincoln's for the gentleman,  
And Gray's for the boor.

The necessity for rhyming some word with *poor* is the only reason apparent for this libel upon Gray's Inn. If a student



contemplates practice at the Chancery Bar, he will follow custom and attach himself to Lincoln's Inn, which no doubt traces its traditional preference for Chancery to the days when the courts of the Vice-Chancellor were located on the ground on which it now occupies. The Inner and the Middle Temple are more especially the Inns of the common law barrister. The Middle is by tradition the most catholic and democratic of all the Inns, while the Inner, larger at present in point of numbers, is recruited largely from the universities of Oxford and Cambridge, and it is supposed to entertain certain aristocratic leanings. Gray's Inn, the smallest of the four in point of numbers, makes no choice between the chancery and the common law bars. It possesses, however, a mellowness and charm of its own, and claims as its patron saints Queen Elizabeth, Lord Bacon and Lord Chief Justice Coke. When an incendiary bomb from a German airplane pierced its roof, it narrowly escaped the Crown of Martyrdom.

In government and custom there is little room for choice. All four of the Inns are voluntary incorporated societies wholly independent of the State and of each other, although they have chosen to act together in providing for the education and examination of students, and in defining the conditions for a call to the Bar. Their membership is divided between students, utter barristers and benchers. The Masters of the Bench are the governing body of the Inn, filling their ranks from time to time by coöptation from the barristers of more than ten years' standing. It is they who decide what patrons shall be admitted as students and what students shall be called to the Bar. When the barrister has donned his gown, it is they who supervise his professional conduct and who may for sufficient cause inflict upon him the ultimate penalty of dismissal from the profession. So long as he remains at the Bar, the barrister is subject to their supervision, for to retire from the membership of his Inn, unless indeed he becomes a member of another, is to forfeit his right to continue in practice. The Committee on Membership of the American Bar Association may well heave a sigh of envy at thought of such a system.

To discuss in detail the preparation necessary for admission to the Bar would be beyond the scope of this address. It is



enough to say that the student must address himself to a double entry; first, keeping terms, and second, passing examinations. The so-called dining terms of the Inns are four in each year lasting three weeks each. Twelve terms or three full years, in the absence of some special dispensation, must be kept by dining in hall. Three days in each term is sufficient for those who are students in some university, six days for those less fortunate; and in order no doubt that the student may improve in morals as well as in mind, no attendance is counted in his favor unless he be present at grace both before and after meals. The examinations which precede his call are prescribed on behalf of the four Inns by the Council on Legal Education upon which all the Inns are represented. A course of preparatory lectures is arranged by the Council, which the student is at liberty to attend or ignore; but whatever method of instruction he may choose, he must absorb sufficient information to pass the required examinations and must digest the quantity of food to which his dining terms constrain him.

The segregation of his intended calling is made clear by the fact that he must pledge himself upon his entrance (as well as upon his call) that he does not and will not directly or indirectly act in the capacity of

“solicitor, attorney at law, writer to the Signet, writer of the Scotch courts, proctor, notary public, clerk in chancery, parliamentary agent, agent in any court, original or appellate, or to any justice of the peace, registrar or high bailiff of any court, officially professed assistant, or deputy receiver and liquidator in any bankruptcy or winding up act, chartered, incorporated or professional accountant, land agent, surveyor, patent agent, consulting engineer, clerk to any judge, barrister conveyancer, special pleader of equity draftsman, clerk of the peace, to any court of justice.”

and moreover that he is neither engaged in trade nor an undischarged bankrupt. Only when he has purged himself of all such lesser ambitions is he ready for the society of the Bar.

Except for the necessity of examination there is little that is similar in the making of a solicitor. Straight is the gait and narrow is the way which he must travel on his professional path. The steps are four in number; first, he must serve as a



clerk for years under a practicing solicitor; second, he must pass the required examinations, conceded to be even more exacting than those demanded from the barrister; third, he must be duly admitted and enrolled; last, he must take out a proper certificate to practice. By the articles of clerkship he binds himself to the service of a practicing solicitor, paying him an agreed premium for his tutelage. In one such contract I recall the amount to have been 250 pounds, the addition of a stamp duty of eighty pounds must be affixed under penalty. The articles when executed must be enrolled and registered at the offices of the Law Society. How rigidly they bind the novitiate appears from the fact that before he enters upon any duty or engages in any employment whatever other than that stipulated in the articles, whether in or out of office hours, he must obtain his principal's consent and the sanction of the judge. Even though the employment in no way interferes with his service under the articles, there is no relaxation of the rules, and the penalty is the loss of credit for so much of his five years' term as had elapsed before the offense. Thus where it appeared that an articulated clerk had acted without permission as clerk to a Parish Vestry, which seems rather an innocuous calling, it was ruled that he had contravened Section 10 of the Solicitors Act of 1860, and his service was vitiated accordingly.

The examinations are three in number, preliminary, intermediate and final. The preliminary examination which is a condition precedent to service under articles is intended to demonstrate the possession by the clerk of sufficient general education to qualify him for the study of law. It includes among other subjects English, arithmetic, algebra and elementary geometry, the geography of Europe and the history of England, Latin and any two languages out of the following six, namely: Latin Translation, Greek, French, German, Spanish, Italian. The intermediate examination can be taken by the candidate at any time after the expiration of twelve months' service under his articles, and consists of two parts elementary law in which the selected work has been for years Stephen's Commentaries on the laws of England, and second, trust accounts and bookkeeping. The final examination comes on the



eve of the expiration of the articles of service. The subjects are (1) principles of the law of real and personal property and the practice of conveyancing; (1) the principles of law and procedure in forms usually determined or demonstrated in the Chancery Division of the High Court of Justice; (3) the principles of law and procedure in matters usually determined or demonstrated in the King's Bench Division of the High Court of Justice and in the law and practice of bankruptcy; (4) the law and practice of probate, divorce and admiralty, ecclesiastic and criminal law, and practice and proceedings before the Justices of the Peace. Let us search our consciences and ask whether as practicing members of the American Bar we would be safe under analogous fire.

Unlike the barrister, the solicitor is not compelled to maintain a membership in the Law Society, which plays so large a part in his professional life. The law list for the year 1920 contains the names of some 16,000 enrolled solicitors in England and Wales; only 9000 of these are members of the Society but all of them alike are subject to its disciplinary power. Formerly the jurisdiction to strike solicitors from the roll for professional or personal misdemeanor was vested in the High Court of Justice, acting upon recommendation of the Society. By recent statute, however, the Society itself is given original jurisdiction to strike off an offending solicitor, whose only remedy thereafter is to appeal to the High Court of Justice. Since the Society acts in such matters only after a formal hearing, it is fair to assume that few appeals will be successful.

Thus the barrister and solicitor having entered their callings by different doors, pursue their separate lives to the end. They are not even welcome guests in each other's houses. No barrister can invite a solicitor to sit at table with him in the Inns of Court; and while the barrister may visit the sumptuous and comfortable quarters of the Law Society in Chancery Lane, where solicitors congregate, his frequent coming would lay him open to the suspicion that he was in search of business. One of the reproaches lodged against the notorious Jeffreys is that he came into full practice by getting acquaintance with the attorneys in city and "drinking desperately with them."



Apparently it is not his habits, but his associations which history condemns.

After this discussion of the ranks and orders into which the legal profession in England is divided, it may seem paradoxical to say that another point of contrast with the profession in America is the greater solidarity that prevails in England. In comparison with the close knit organizations sheltered by the Inns of Court and the Law Society, we in America seem so many scattered English grains of sand. It is difficult to make one familiar only with English atmosphere understand that in truth, notwithstanding this Association, there is no such body as the American Bar. There are instead scattered groups consisting of County, City and State Bars, with a Federal Bar here and there composed in part of some members, but united by no tie of common origin or discipline.

In England, on the other hand, especially among barristers, there is a sense of solidarity and community of interest to which we do not attain. The companionship of the Inns permeates their entire professional life, and in the days gone by there was added to this the fraternity of the old Circuit messes that made their semi-annual rounds to the assize towns. These pilgrimages Dean Swift has satirized in his jingling verses,

Now the active young attorneys  
Briskly travel on their journeys,  
Looking big as any giants  
On the horses of their clients.

and so on and so on for a hundred lines or more.

Those who dwell with affectionate memory upon the golden age of the Circuit Bars lament the fact that the leaders of to-day no longer go regularly upon circuit and can be enticed away from the comforts and emoluments of London only by promise of a bumper fee. Perhaps it is rapid transit, perhaps other causes less obvious, but the fact remains that the concentration in London, both of the lawyers and of the legal business of the Kingdom, is a phenomenon quite without parallel on this side of the sea.

Of the ten thousand barristers carried on the Law List, but



363 are entered as of the Provincial Bar, and in 1920 among the 307 King's Counsel but one was registered outside the Capitol. Again, one-third in round numbers of the enrolled solicitors are credited to London, and one must remember that among the remaining two-thirds who are entered as country solicitors are included those who serve the great cities of the Midlands and the North, such as Sheffield, Birmingham, Manchester, Leeds and Liverpool. Which is cause and which effect might be hard to say, but it is evident either that litigation has drawn the lawyers or, what is less likely, the lawyers have drawn the litigation to a central focus. Setting to one side the petty cases tried in local courts of limited jurisdiction, an overwhelming majority of all the lawsuits of the Kingdom are tried and decided in the Law Courts on the Strand. For instance, in the last year for which figures are at hand, 2117 cases were set down for trial in the King's Bench Division of the High Court of Justice; only 609 of these were entered on Circuit, and of this number 384 are credited to the cities of Manchester, Birmingham, Liverpool and Leeds. Twelve of the assize towns had no case for trial; eight had but one; thirty-four others an average of but six cases. One commentator has suggested that provincial solicitors labor under the impression that London juries give larger damages than can be obtained in the Provinces, and for this reason rush to enter their cases on the Middlesex County list. In support of this, an instance is cited of a client who was once deprived of cost by Sir Henry Hawkins because his case should have been brought in Dorsetshire, but who consoled himself by the reflection that he had recovered £300, where a country jury would have given him but £50.

Having embarked upon statistics, let me digress to add a word on the subject of the relative amount of litigation in England and America. One must remember, in comparing figures, that the population of England and Wales is roughly one-third that of the United States, and this disproportion will naturally reflect itself in statistical returns. But the difference in population is quite insufficient to account for the disparity which in fact exists. Startling as it may seem, the major litigation of England and Wales is relatively little more than the litigation



in our Federal Courts alone; and the vast tide of controversy that flows through our State Tribunals may be credited to us as surplus belligerency. I have no complete statistics with which to prove this assertion, nor would I tire your patience with them if they were at hand, but a few comparisons will be suggestive. During the five years from 1914 to 1918 inclusive, the average number of new cases docketed with the Supreme Court of the United States per term was 576.6; in the House of Lords for the same period it was 81 for the United Kingdom and 51.8 for England and Wales. In the year 1918 there were docketed in the Circuit Court of Appeals of the United States 1320 new cases. For the same period in the English Court of Appeals but 488, which was, however, 83 cases less than the five-year average. In the same year the District Courts of the United States docketed 72,237 cases, including 20,385 bankruptcy proceedings; while in the High Court of Justice, including its Chancery, King's Bench, Probate and Admiralty Divisions, 36,171 proceedings were commenced and 1276 bankruptcy petitions were filed. It is true that in this same year the County Courts present an imposing total of 309,096 complaints entered; but 308,650 of these were for sums not exceeding £20 and but 209 for sums over £100.

Figures are often misleading and generalizations from incomplete statistics are always dangerous; and yet I believe it may be truly said that the average Englishmen, with all of his proverbial insistence upon his rights, calls less often upon his courts for relief than does his American cousin. Who shall come forward with an explanation of this fact, if fact it be? It is a survival of days long gone when justice was not only costly but tardy and uncertain; is it because there exists in England a class of lawyers whose business lies wholly outside the Courts and in whose hands many controversies are settled without judicial aid; or is there a reason deeper still in the age-long habit of this island people to respect the law they have made and live their daily lives within its well-marked circle?

Now, in addition to its organization and its unity, I venture, all novelists and story-writers to the contrary notwithstanding, to ascribe to the legal profession in England, as another attribute, a marked spirit of progress. To justify this statement by



review of the sweeping changes which have taken place within the last century, notably in the Judicature Acts of 1873, 1874 and 1875, would be easy; but much has happened since the century turned to show that the English lawyer has not lagged behind the times in his liberalizing tendencies. In his own house he has set up the General Council of the Bar to rule on matters of professional etiquette; and has installed a new and comprehensive system for the education of articled clerks as solicitors, both in the Provinces and in London. The disciplinary powers of the Law Society have been reaffirmed and enlarged. Representation has been accorded to the practicing members of the profession on the committee charged with making rules and orders in all branches of the High Court, which is now composed of eight judges of the High Court, two members of the General Council of the Bar, one member of the Council of the Law Society and one other solicitor, presumably a provincial. Justice has been brought nearer to the masses by the enlargement of the common law jurisdiction of the County Courts, and a movement is on foot to distribute the trial of cases, especially in matters of divorce more generally throughout the Kingdom.

In the domain of criminal law and procedure, the spirit of advancement has made itself notably felt. One would hardly expect the learned compiler of Smith's Leading Cases to stand forth as a poet, and yet seventy years ago he described the ancient lot of the prisoner in the following lines:

No tribe, with rusty camlet gowns  
And shabby horsehair wigs,  
Harangued the upper gallery  
In favor of the prigs.

No troop of venal witnesses,  
Insured to perjury,  
Were ever brought by knaves who sought  
To prove an *alibi*.

For sundry wise precautions  
The sages of the law  
Discreetly framed whereby they aimed  
To keep the rogues in awe.



For lest some sturdy criminal  
False witnesses should bring—  
His witnesses were not allowed  
To swear to anything.

And lest his wily advocate  
The Court should overreach,  
The advocate was not allowed  
The privilege of speech.

Yet such was the humanity  
And wisdom of the law,  
That if in the indictment  
There appeared to be a flaw,

The Court assigned him councilors  
To argue on the doubt,  
Provided he himself had first  
Contrived to point it out.

Yet lest their mildness should, perchance,  
Be craftily abused,  
To show him the indictment they  
Most sturdily refused.

But still, that he might understand  
The nature of the charge,  
The same was in the Latin tongue  
Read out to him at large.

Doubtless most of this had passed before 1898, but it was not until that year that the accused became a competent witness on his own behalf in an English court. In 1907 the Court of Criminal Appeal was erected with jurisdiction to review either conviction or sentence on matters of fact, or mixed law and fact, or upon any other ground; to quash the conviction or modify the sentence either by reduction or enlargement of its terms but, singularly, as it seems to us, without power to grant a new trial. Latest of the innovations in this field is the Indictment Act of 1915 under which the language of all indictments has been reduced to the smallest compass. Years ago when the jail fever raged in Newgate prison, the judges of



the criminal courts buried their noses in fancied protection in bunches of aromatic herbs. To this day when the summer term at the Central Criminal Court, the Old Bailey, is opened, the Lord Mayor in his robes and chain, attended by his sheriffs and the bearers of his sword and mace, the attending Alderman and the judge enter the court room bearing each a nosegay, and the judicial dais is strewn with the aromatic herbs of former days. In such surroundings one confidently waits to hear all the rolling phrases of a common law indictment, and feels it a distinct anachronism when the clerk reads out a charge containing nothing more than this:

*The King vs. Albert John Brown.*

Albert Brown is charged with the following offense:

Statement of offense: murder.

Particulars of offense: Albert John Brown on the 19th day of October, 1920, in the County of Essex, murdered Caroline Smith.

Latest, although not least, of the portents of change are those due to the Act for the Removal of Sex Disqualification, passed in 1919, which was ushered in, not without much wagging of heads, the woman barrister, the woman solicitor and the woman jury member. When mixed juries made their first appearance there was much discussion among judges and lawyers of the proper method of address, since the time honored, "Gentlemen of the Jury" was manifestly obsolete. The difficulty was finally resolved by the adoption of the somewhat obvious phrase "Members of the Jury."

And yet, even in courts so modern and so new as the Court of Criminal Appeal, antiquity still rears its hoary head and will not be denied. I recall one case, in which our distinguished guest was a participant, where the Court was called upon to determine the jurisdiction in a charge of perjury of the Justices of the Peace for the Liberty of Peterborough, and which involved a discussion of English history and of royal charters running back to ecclesiastical grants from Edgar the Saxon and Wolfranc the Elder. What an example such a case affords of the old and new which is at once the charm and strength of England and of English law? Is not the crown of the political



genius of the Anglo-Saxon his ability to make great changes, both in law and government, without resort to violence? His movement may be slow, at times so deliberate as to be imperceptible, but none the less he moves. The radical of to-day is the conservative of to-morrow; the rearguard camps at night by the smoking watch fires from which the vanguard departed in the morning; but without breaking ranks or losing touch the whole column moves steadily onward to a broadening figure.

In opening my remarks I promised not to burden you by any reference to the problems of the hour. May I be released from that engagement for a closing word? When all comparisons have been made, and all differences recounted, the fact remains that the members of the legal profession in England are in very truth our brethren overseas. The common law by which we live has its roots in English soil. The judges who interpret it on both sides of the water look to their distant colleagues for counsel and assistance, and the principles of liberty which it embodies are the rod and staff by which our peoples walk. Trained in the same school, professing the same great ideals, sharers of like immunities and privileges, there rests upon the legal profession in England and America a duty which is joint and not several, compact and not divisible. The nations whom they serve stand to-day supreme in present strength and in potential energy. Upon them Destiny has laid accordingly the largest responsibility for the immediate future of the world. Shall not the lawyers, who lead as well as serve them, guide them in the ways of mutual confidence and joint endeavor in the service of mankind?



# CHARLES GATES DAWES

## BUSINESS ORGANIZATION OF THE GOVERNMENT

Charles Gates Dawes was born in Marietta, Ohio, in 1865. He was admitted to the bar in 1886. He was Comptroller of the Currency in 1897-1902 and has been President of the Central Trust Company of Illinois since 1902. He was commissioned Major of the Engineers in 1917, served in France and later became Brigadier General and General Purchasing Agent for the A. E. F. His great services in the War led to his appointment by President Harding as director of the Federal Budget System in 1921. Following his success in establishing a Federal budget he was appointed to the Committee of Financial Experts which afterwards became known as the Dawes Committee and established the Dawes Plan for Germany. An account of his services on this committee is given in the address on page 478 by Mr. Owen D. Young on the Dawes plan. Mr. Dawes was elected Vice-President of the United States in 1925. He entered upon his task with vigor, and his outspoken and picturesque speeches won the immediate attention and approval of the public. The address which follows was made at the second semi-annual meeting of the Business Organization of the Government held in the Continental Memorial Hall in Washington.

President Harding was the first speaker and at the conclusion of his address he spoke as follows:

I wish I might personally express appreciation and gratitude to every individual member of the coördinating forces and all of those who have been contributing to the notable success of the Budget. Sometimes, aye oft-times, the Government compensates inadequately, and there is scant expression, if any, of that gratitude and appreciation which have been so well earned; but there must come to you that finer and dearer return which is the highest compensation men may know in the public service—the consciousness of a good work accomplished.

I suspect sometimes there are public servants in more conspicuous positions who find themselves momentarily discouraged by





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a lack of public understanding of the difficulties of their tasks and an ungenerous appraisal of things accomplished. Sometimes it is partisan, sometimes it is ignorance, not infrequently it borders on the malicious, which is designed to create unrest, and when I contemplate the unresisted flow of extravagance and the tendency to drift the ship of state on the rocks of bankruptcy which is far too prevalent throughout the world, I must express to every one of you and to all in authority who have assisted you my appreciation for the splendid work done in bringing the Government business activities back to a state which intelligence may approve.

Perhaps other Governments were brought to greater strains of expenditure and more difficult financial straits through their more intimate and heavier burdens of war; and notwithstanding that fact, and that we have suffered less comparatively, I doubt if any Government in the world has made a more persistent and conscientious endeavor to cut down its expenditures and institute economies and restore sane and normal ways again.

You have inaugurated a very practical work of exceedingly great importance, and the results have been so gratifying and have proven of such advantage to both the Government and the public that I am taking this opportunity of openly uttering to you the assurance of my appreciation and gratitude.

Now, if I may, I want to call to the presiding position the one genius whose devotion and personality and capacity have been the inspiration of the great success of the budgetary system, Gen. Dawes. [Applause.]

MR. PRESIDENT, GENTLEMEN OF THE COÖRDINATING BOARDS, AND MEMBERS OF THE BUSINESS ORGANIZATIONS OF THE GOVERNMENT:—It is a great handicap to a business man, in a business meeting, called to discuss routine business, to have this kind of an introduction; to be surrounded by this intangible, imponderable atmosphere of dignity and restraint which pervades important Government gatherings and which, unless dissipated, always interferes with the proper meeting of minds in business conference. The members of the business organization of Government gathered here must not think of business in its relation to personal dignity or in its relation to personal prerogatives just because it has been done in Government business for over a hundred years. Despite these formal surroundings, despite the depressing psychology of a gathering of very high Government officials, I must regard the President of the United



States here to-day, not as one engaged in carrying out great policies of State, or the members of the Cabinet as his advisers upon these great policies, but as the head of a routine business organization and the members of the Cabinet as nothing but the administrative vice presidents of this organization, who heretofore, because of the absence of leadership and because of a system for which they were not to blame, have, with their predecessors, allowed a disgraceful and extravagant system of routine business to obtain in this Government for 130 years—a condition which President Harding started to rectify when, last June, six months ago, he called together the first meeting of the business organization of Government in the 130 years since its establishment.

There is no reason why, because the Government of the United States does the largest business in the world, it should be the worst conducted. What I want you to do is to listen to a discussion of simple business principles in a simple way, just as if we were members of a smaller corporation, meeting not in the peace conference room, but in a business office, with only ordinary men around, discussing only ordinary things—to get attuned to that kind of an atmosphere—and not to have our thoughts diverted because the President of the United States is here, or the press is here, or all these uniforms are here, and all these other conditions that do not embarrass an ordinary business meeting.

Now, at the first meeting of the Government business organization last June the President assumed, for the first time, his position of responsibility as the head of the business organization of Government. At that time there was no adequate machinery in the hands of the President for the transmission of Executive will and policy in the matter of routine business to the body of the business organization. That first meeting, therefore, was devoted to an effort on the part of the President to arouse the business organization to the overwhelming necessity for economy in governmental expenditures—to bring to each man the essential fact that he would be held personally responsible for participation in such a program. He let you know then that at the end of the year he would check you up, just as if he was in charge of a private business organization,



to find out whether you had carried out his policy. That sort of pressure had its effect upon this great organization, and at the end of 30 days, during which you made a careful examination to determine the possibilities, you promised him that you would reduce your expenses in the sum of \$112,000,000 per year. He continued this pressure, having in the meantime established agencies for such continuing imposition in the shape of these great coördinating boards, the representatives of which sit before you.

At the time the President commenced this effort the forecast of governmental expenditures for the present fiscal year, made by the heads of departments and establishments who had formulated their demands before Executive pressure had been instituted, amounted to the sum of \$4,550,000,000. As a result of pressure, the President was able to announce in December that, instead of a reduction of only \$112,000,000 first promised him, the reduction, including \$170,000,000 of public debt postponement, would be nearer \$576,000,000, and that we would undertake to run the Government for the fiscal year 1922 on the sum of \$3,974,000,000 instead of \$4,550,000,000.

The imposition of Executive pressure immediately removed the chief cause for the riotous extravagance in Government business which had theretofore run without a head, and where the chief object of every man connected with it seemed to be how much money he could get for the plans of his individual department, instead of how little he could get along with in carrying out a policy imposed by the President, who thought in terms not of departments, but of one Government responsible to the public.

After this first meeting of the business organization, where, just as in private business the President imposed policy, there followed the creation, by Executive order, of these coördinating agencies, which not only transmit Executive policy and plan, but which become gatherers of information as to the business of Government from the bird's-eye view, which, presented to him, assists him in his formulation of a unified policy. What the President did in creating these coördinating boards was a simple thing in the business world. He selected, not from strangers, but from the body of the existing business



organization, men of experience in the business, with acquaintance in the business, with qualifications developed by continued contact with the business organization, and formed committees, imposing over them the authority of an agent representing Executive authority.

There is no finer body of business men in this country than these underpaid men of talent confronting me, who find in their public service a satisfaction which private employment cannot give. Let me say something here. These coördinating boards are not boards in the common acceptation of that word. They do not act as boards, either by majority vote or otherwise. They have no personnel. Authority lies only in the Chief Coördinator, who presides over them, acting under Executive authority. His power lies through orders of coördination alone, and from his orders there is always preserved the right of appeal of the head of a department or establishment to the Chief Executive himself. I mention this because these coördinating agencies have been established in accordance with law, and all the steps in the reorganization of the routine business of Government have been taken with most careful regard to existing law. It may not seem so, but we in the Bureau of the Budget try to be the most cautious people in Washington. Every time we consider a new move we expect to have some old and forgotten law confront us which, if we walk over it, like a mine in the Argonne battle field left by the enemy would explode under us. In every important step taken before we act, we secure a departmental interpretation of law, and I say to you now, with deep regret, that in connection with official interpretation of law the mental status quo of legal advisers often seems one of enthusiastic support of the old status quo in Government business and in the interest of the plans of departments as distinct from the new plan of a unified system for the whole Government.

Until the President assumed his attitude of responsibility for a unified plan, the attitude of everybody from Cabinet, department heads, and bureau chiefs down to clerks has always been one of hostility to anything which interfered with the plan of their separate jurisdictions, irrespective of the demoralizing effect of such an attitude upon the business interests of the



Government which they have sworn to serve. They have not been to blame for it; lack of system has been to blame for it; and for that lack of system the past Presidents of the United States have been to blame, for any one of them could have established a proper system.

The suggestion was made by some one the other day that in selecting these coördinators and agents from the body of the business organization to transmit his policies it would be impossible for the President to get men who would give him impartial judgments in connection with the imposition of a unified plan of business, because of their former allegiance to the particular department from which they were chosen—that he could not depend upon them for that absolute impartiality between the departments which is necessary in the work to which he called them. What folly! Has the President of the United States less power over his business organization than the president of a private organization? Need he be afraid, with his immense powers over personnel, including the heads of departments and establishments, to rely upon the loyalty of these agents? As the head of a bank, in selecting agents to transmit my policy, would I hesitate to call into my office service a man from the trust department, or the foreign exchange department, or the discount department, to use him in gathering information and transmitting policy, because I would fear that this man would be more loyal to the head of the discount department, or the trust department or the foreign exchange department than he would be to me, and would I, therefore, go out into the street and hire Tom, Dick, and Harry, who knew nothing about the business, to do the work in his place?

The only reason we have gotten anywhere in this business reorganization of government is because we have not only completely absorbed, but I say completely demonstrated, the truth that the proper machinery with which to run governmental routine business must be similar to the machinery to run private routine business.

I say “demonstrated” because the President has told you that these coördinators, who are already in the Government service, and who, in the aggregate, draw only \$109,000 per year compensation, have, in about four months, effected meas-



urable direct cash savings to the Government of over \$52,000,000, and directly and indirectly about \$100,000,000.

In routine business there should always be but one head. In our republican form of government our Constitution provides a system of checks and balances which protect the liberty of the people in connection with the determination of governmental policy. In a free government like ours there is no central control in determination of general policy, but after policy is established under the methods prescribed by the Constitution, then in the routine business of government, concerned with the expenditure of money to carry out policy, the principle of one central control must obtain or you will go back to the riotous extravagance which has characterized governmental routine expenditure in the past.

We in the Bureau of the Budget are not concerned with matters of policy. The President, advised by the Cabinet, and Congress determine the great questions of policy. As for us, we are men down in the stokehole of the ship of state, and we are concerned simply with the economical handling of fuel. The President and Congress determine which way the ship sails, for that is a matter of policy, but we in the hold of the ship have something to do with how far she can sail through the way in which, in our humbler place, we apply common-sense business principles.

These coördinators do not have their eyes upon the press gallery. And here I want to say something to the representatives of the press here present, as an expression of my deep appreciation of the fact that they have treated this new system of coördinating routine business in a constructive way—that they have not bothered it in quest for scandal. You members of the press, as faithful American citizens, are just as much interested in the success of this effort to save money for the Government and to increase efficiency as is the President of the United States or the Director of the Bureau of the Budget, and you are showing it. It would be possible for you to do incalculable damage if you were so minded, but, Heaven be thanked, we have been spared the attention of the destructive newspaper critic—that kind of destructive critic who encourages public men to exploit their pitiful personalities at the ex-



pense of the public service by throwing monkey wrenches into usefully moving machinery. I would as soon invite one of that kind of newspaper men to a business meeting like this as to put rat poison in my breakfast food.

Now that we have this formal atmosphere dissipated and are down to matters of plain business common sense, just as if we were sitting in an ordinary business meeting, I am going to talk with perfect freedom to the members of the Cabinet as simply members of this business organization. I confess it is not easy to regard Secretary Hughes, for example, as anybody but the great Secretary of State, who, in the last few months has done so much for the world and for the future peace and happiness of humanity. That is the trouble down here in routine business. That is the trouble that our coördinators have. We have to rid ourselves of the idea that because Mr. Hughes is a man to whom the President of the United States and the world owe a debt he is not a proper subject for that power of Executive control which, in his capacity as one of the administrators of routine business of Government, must tie him into a routine business organization and enable him to save money. Mr. Hughes is so intelligent that we have no trouble in our relations with him. But this is not saying we do not have trouble with some officials of this Government in less important positions.

I do not want to compare for a minute our work down in the stokehole of the ship with the work of those who are bringing better conditions of life and safeguarding the tranquillity of the world in connection with this peace conference, but I will say to you that in our work we will save to the taxpayers of the country every year double the amount that can be saved by the plan for the limitation of armament. And these business matters are, therefore, important enough to properly engross the attention of even the Secretary of State, the Secretary of the Navy, and every other member of the Cabinet.

I want to say here again that the Budget Bureau keeps humble, and if it ever becomes obsessed with the idea that it has any work except to save money and improve efficiency in routine business it will cease to be useful in the hands of the President. Again I say, we have nothing to do with policy.



Much as we love the President, if Congress, in its omnipotence over appropriations and in accordance with its authority over policy, passed a law that garbage should be put on the White House steps, it would be our regrettable duty, as a Bureau, in an impartial, nonpolitical, and nonpartisan way to advise the Executive and Congress as to how the largest amount of garbage could be spread in the most expeditious and economical manner.

That is not humorous. That is intended to serve notice on those who would seek to make political capital against this routine business reform of the President that the success of the Budget Bureau depends upon our integrity and sincerity in a determination to be nonpartisan, nonpolitical, and impartial. Whatever may be the political complexion of Congress, or the party affiliations of a President, this impersonal business agency of the Budget Bureau, and these coördinating boards, concerned not at all with policy, must endeavor to see that the money of the Government is spent in the most economical manner in routine administration along the lines of policy which are adopted by those charged by the Constitution with the duty of imposing them.

Now, let us look for a minute at a business matter. I have a criticism in my system which I must get out of it. And in this connection I must speak directly to the members of the Cabinet here, because in connection with this matter they are simply administrative vice-presidents of a business organization, and as a representative of the President, charged with pointing out things that are wrong, it is my duty to talk to them in this way.

I want to say first that I have no complaint to make of the splendid coöperation that we have had from the Cabinet. At the same time I do not hesitate to say that the reason why this Cabinet, in distinction from all others which have gone before, are coöperating in unifying routine business of the Government is not because their human nature is different from that of their predecessors, but because their personalities are irradiated by the determination of the Chief Executive to bring about common-sense methods in governmental routine business. It is right for me to say that. I look upon your



attitude as determined by the attitude of the President, and you would fail in the matter of coöperation with the President were it not for the existence of these coördinating agencies.

What I want to do in this discussion is to take, once and for all, from the realm of debate the principles underlying these coördinating agencies, the question of their necessity to the Cabinet as well as to the President, and their success in accomplishment. Now I am going to take an illustration from the Navy. I want to say, to start with, that I have nothing but a feeling of gratitude to you, Mr. Denby, and to your staff for the fine coöperation you have given us in our work. But I am going to show you by an illustration how you would have been unable to coöperate with the plan of the President had it not been for these coördinating boards. In connection with the Navy we have a bird's-eye view—as with all departments—of its relation to the whole Government business situation. The Coast and Geodetic Survey, which is a part of the Department of Commerce, needed two ships, and I wrote to the Secretary of the Navy, asking that he agree to the transfer of two mine sweepers from the Navy to the Coast and Geodetic Survey work.

I got back a letter from the Assistant Secretary of the Navy, stating that the Navy would not agree to release the ships. Now, under the old régime that would have ended it, but under the power which the President has given us to make a picture of the whole situation, we had information that the Secretary of the Navy did not have; and so, as the President's agent, I called over to my office the Assistant Secretary of the Navy. From information gathered by the impartial coördinating agents, I was able to tell him that the Navy had 49 mine sweepers in their possession, which were going out of commission; that their deterioration would be more rapid out of commission than in commission; that if they were loaned to the Coast and Geodetic Survey, these two mine sweepers would be kept in commission and, therefore, would not deteriorate so rapidly; that if a war should arise the Coast and Geodetic Survey could transfer them back. But, what was still more important, I told him that if the Navy did not transfer these mine sweepers to the Coast and Geodetic Survey, the President would have to



ask Congress for an appropriation of \$1,000,000 to build new ships. The Assistant Secretary then took the letter back to the Navy Department and sent another one, acquiescing in the issuance of an Executive order transferring the mine sweepers to the Coast and Geodetic Survey. It was unnecessary for me to take this matter before the President, because the presentation of the bird's-eye view of the situation to an intelligent Secretary of the Navy resulted in this agreement.

But let us go a step further. When the Coast and Geodetic Survey went to get the ships they found them in process of repair, with engines disassembled. It developed that it would cost \$10,240 to assemble the engines and place the ships in repair so that they could be used by the Coast and Geodetic Survey. Accordingly I wrote the Navy Department asking them to spend the \$10,240 on the ships, since the Coast and Geodetic Survey had no appropriation which could be used for this purpose. The Navy Department again answered declining to repair the ships. Now, I am not criticizing especially the attitude of the bureau chief who was responsible for that declination. His mind was set upon saving money for the Navy, and it had never been directed toward the question of saving it for the Government, except as he might save it through the Navy. We had asked him to economize and save on the Navy appropriation, and he naturally did not want the money spent for something that did not accrue directly to the benefit of the Navy as he saw it. So again I called the matter to the attention of the Secretary of the Navy, pointing out that the saving of \$10,240 of expense to the Navy to put these ships in proper condition, since the Coast and Geodetic Survey had no appropriation to do it, might result in a loss to the Government of \$1,000,000 to build two new ships. The Secretary of the Navy then wrote saying that he would be very glad to put the ships in repair before delivery. Now in this matter we were doing a service to the Secretary of the Navy as much as we were to the President of the United States and to the Government of the United States, for we gave the Secretary of the Navy information which he would not have had otherwise, so as to enable him, by his action, to serve the best interests of the Government in a common situation.



How is it possible to run the routine business of the Government right unless these coördinating agencies are in existence to give the bird's-eye view of any given situation, so that the real interest of the Government in any transaction may be developed? Now, we have had fine coöperation from the Navy Department in the larger matters, and the President has transferred millions of dollars worth of ships from the Navy, with the acquiescence of the Secretary of the Navy. The higher officials of the Navy Department have shown the right spirit. I want to emphasize this, because I am now going to criticize an action of the Navy Department as indicating, along down the line in a particular instance, the lack of a proper spirit of coöperation.

Now, when I mention this do not forget that the Navy Department is the only department of the Government which has an audit of material; that Admiral Coontz was the first man, after the inauguration of the Budget Bureau, to send to his organization an appeal for renewed efforts for economy; that we have no criticisms to make of Secretary Denby and his department as a whole. As a rule, I do not think it is either good strategy or good economy to invoke the aid of pile drivers to smash fleas. But the example which I am going to give you, while it concerns a small matter, shows a lack of a spirit of coöperation which must be done away with, through Executive force if necessary. As coördinators, and not concerned with departmental administration, we have no power to fix the specifications in regard to material which you, as Secretary of the Navy, find it necessary to buy. But under the law we are charged with bringing to the attention of the Executive the necessity for improvements in methods of business wherever we find them. I am bringing to his attention an instance of a too rigid stand upon a technical departmental right, which has characterized only a few of our governmental officials since the inauguration of the President's reform, notwithstanding it characterized the attitude of practically everyone before it was inaugurated. I will say here in the Budget Bureau we try to be patient and we try to be humble. So far we have not made a charge against any of the departments for a lack of coöperation to the President of the United States. My coördinators



and I take our hats in hand and go around to the departments and try to stop trouble, and to plead for reasonable action, in order not to be justly charged with the misuse of the great authority which the President has given us.

Now, hand me those brooms. [The speaker was handed two brooms.] This may look like stage play, but it is not, because things like this have got to stop. Here is a Navy broom, made in accordance with Navy specifications. Here is an Army broom, made in accordance with Army specifications. Do you see much difference? As a matter of fact, the Navy broom is a little better than the Army broom. But what would you think of any business organization which would buy 18,000 of this kind of broom, as the Navy did, when it could have had 350,000 of this kind of broom for nothing? Suppose a thing like that had occurred in a private business organization? Would it ever be necessary to bring it before the entire body of the business organization at a semiannual meeting as an example to be avoided? I tell you, as a business man, that if a thing like that occurred in a private business organization, the mere knowledge of it in the body of the business organization would drive the man guilty of it out of his position. It was not you, Admiral Coontz, who was responsible for this, but some official along down the line who stood on his technical rights, although he could not but know that by so doing he was involving his Government in an unnecessary loss.

Now, the Marine Corps was in the market for shirts of a certain specification, and after about a month Col. Smither induced them to take 100,000 Army shirts instead of buying them in the outside market, and by so doing made possible a saving of \$24,000. That seems small, and yet it was about one-fourth of the annual cost of these coördinating agents, who have saved directly and indirectly about \$100,000,000 to the United States Government in a little over four months. We have to get the proper perspective in these things, and realize that the great savings come by making a large number of small savings. These small things involve great principles, and let nobody suppose that the President is not now in position to take notice of the relation of important small things to impor-



tant great things. He knew I was going to speak about these brooms to-day.

This reorganization of the routine business of Government is not something which is going to take place, but it has already taken place. I have had to mention fliespecks here, but fortunately, as compared with the results accomplished, they are only fliespecks. The general spirit of coöperation has been wonderful. Over \$112,000,000 of surplus property of the Government has recently been transferred interdepartmentally. Yet at first I occasionally heard apprehension expressed by those connected with particular departments as to the effect upon their departments of the loss of the services of these few men who went on duty under the President as coördinators. Their protest reminded me of the plaintive call of the disturbed peewit when the underbrush in which it nested was being cut down to make way for some great public improvement.

In the light of the transfer of \$112,000,000 of property, with a direct saving to the Government of \$32,000,000, the proportion of this saving to be allotted to each particular department makes the amount involved in these salaries too trivial for them to talk about. Let us hear no more about the injury to the units in the magnificent results achieved for the whole. It has been necessary to bring everybody here to a realization of what has been done and is being done; to let them know that no instance of a lack of coöperation is too small to be brought to the attention of the Chief Executive. At the end of the year he will make up his efficiency report, never fear.

The members of this business organization must show a proper spirit of coöperation which is enjoined upon us by the President and in which 98 per cent of you are now enthusiastically joining with him. If the other 2 per cent along down the line who have been worrying the life out of our coördinators, do not take notice of this now they will certainly be brought to a realization of things by the Chief Executive. The same situation which the Chief Coördinator, General Supply, finds here obtains, for instance, in the United States Steel Corporation, or in any corporation which is made up of a large number of widely distributed units. This system of reorganized governmental business is such as obtains in private cor-



porations. Do not let anybody suppose that a corporation like the United States Steel Corporation doesn't have to deal with similar situations to those which pertain in governmental business administration. If they want to transfer surplus supplies from a subsidiary like the Illinois Steel Co. to the Carnegie Steel Co., do not think that they make the shop superintendent of the Illinois Steel Co. any happier than these bureau chiefs feel when material is taken from them and transferred to another department. A company like the United States Steel Corporation has a system of coördinated control by which a unified plan of business is imposed, and by which a bird's-eye view of the whole situation can be obtained. But our coördinators often have a much harder time in dealing with the bureau chief than a coördinator of the United States Steel Corporation has in dealing with a shop superintendent. It must be understood that even a lieutenant of the Army or Navy, whom the President has selected as a coördinator, is selected because of his ability and will be used as his agent in accordance with his ability, not necessarily in accordance with his military or Naval rank. It doesn't follow either, as a matter of course, that because a man is of high rank he is a man of high ability. In a business corporation we pick a man to handle brooms and soap by what he knows about brooms and soap, and not because of the markings on his shoulder straps. And however rank may decide the allotment of work to men inside departments, I assure you that ability and qualification for their work governs the President in his selection of coördinators. When the President selects them and clothes them in routine business with a portion of his authority, they must have the right of way, and they are getting the right of way in their work of developing information which will enable the President to continue common-sense methods in handling routine business.

We would not have the effrontery to suggest a change in the specifications of important technical material, but we have established a commission for the standardization of specifications, and there are a lot of standard articles which must be brought to standard specifications between the different departments. In order that the rights of the departments, can always be considered, if any member of a department differs



with the coördinator dealing with standard specifications, nothing can be done until the matter comes up to the President of the United States for a decision, who can then decide the matter with full information, not only as to the effect of any prospective action upon the department, but also as to its effect upon the Government as a whole.

To continue this great work we must all become imbued with the spirit of the President of the United States, who represents a people whose backs are bent under an immense load of taxation. Any matter which as a relation to the success of this task of the President of the United States is not only important enough to be discussed by members of the Cabinet and the body of the business organization, but it is important enough to inspire in every loyal citizen here—for we are all citizens first—a determination to live up to that high standard of effort which patriotism and love for country should always inspire in one in public service. The spirit of coöperation, in the vast majority of cases, will immediately come with a realization of how duty can best be done and under this system it is easy now, for the first time in the history of our Government, for a man to find out how to do his real duty in the routine business of our Government.

I am going to be perfectly frank and mention another disadvantage which the routine business organization of Government contends with. How is it possible for these Cabinet members, occupying their positions for much less than four years on the average, as experience shows, brought suddenly into control of a business of enormous magnitude, with which they have had no previous familiarity, consisting of many unrelated activities, engaging the services of tens of thousands of people occupied in technical activities of the most diversified kind—how can these Cabinet members really be very efficient in connection with discerning control of the routine working of their departments. It would take an ordinary business man almost a lifetime to properly familiarize himself with the routine business of any one of these great departments. And then, in the case of the Cabinet members, their time is largely concerned with the consideration of general policy as advisers to the President. They often go out and make speeches in ex-



planation of policy. They might be diverted and distracted by pressure for patronage. We might as well get down to brass tacks and face facts. These Cabinet members, to enable them to intelligently perform their duties, have to have the help of men who have been connected with the business for years not only inside their departments but through these coördinating agencies of ours outside their departments. I think the members of the Cabinet realize this. Ask a business man like John W. Weeks, of the War Department, who goes to his office at 8 o'clock in the morning and works steadily through the day, about our coördinating agencies and their usefulness to him.

I can not let this occasion pass without a tribute to the magnificent coöperation of the War Department, through Secretary Weeks; the Chief of Staff of the Army, Gen. Pershing; and the Assistant Chief of Staff, Gen. Harbord, without whose assistance, advice and coöperation our work could not have properly progressed.

There should be no natural antagonism on the part of any of the independent services to the President's coördinating services. Take the Secretary of the Treasury. Andrew W. Mellon is a business man, and no one is more anxious to recognize correct business principles than he is. Mr. Mellon will tell you that in his great department he has been able, in a year's time, to touch only the fringe of its routine activities. His back does not arch and his fur go up when our coördinators call on him. They called his attention to the fact that there were from 18 to 23 separate points of purchasing activity in the Treasury Department. So far from resenting the suggestion that these be coördinated so that the representative of the Treasury Department on the general coöperating board could properly speak for all the purchasing activities of the Treasury Department, he asked the Chief Coördinator, General Supply, to suggest a plan for its proper coördination.

Every department head should immediately give attention to coördinating his own department along the lines of the general coördination efforts now in progress by the direction of the President. The attitude of members of the Cabinet is, in our experience, that when a coördinating agent brings them information they seek to profit by it. And I say that along down



the line of business administration of Government, wherever arrogance or dignity or personal pride seeks to shut the door against the acquiring of information, there is real disloyalty to the President's plan. Pride of opinion is the great enemy, and humility in the presence of knowledge is the great ally, of all real progress in business.

In closing, I want to speak once more of the general results on the expenditures for the first six months of the fiscal year 1922—a matter to which the Budget law was not assumed to apply—of the imposition of Executive pressure by the President for economy and efficiency. It has taken the Budget Bureau a full month to determine, even in a general way, whether these six months' expenditures are within the forecast of \$3,974,000,000 total expenditures for the year as compared with the \$4,550,000,000 which the departments had at first stated was necessary.

And let me stop right here, in the presence of the Secretary of the Treasury, to criticize the disgraceful and archaic system which characterizes Government accounting. Gen. Pershing will remember that when he and I lived in Nebraska, about the time of the panic of 1893, a great many small merchants and business men out there kept only one book of account, and that was their check book. In other words, the only accounting knowledge which they had of their business was through their cash account. Whatever cash came in was treated as income. Whatever cash went out was treated as expense. After the panic of 1893 the sheriff took charge of what was left of the assets of most of these men, and out of that hard experience those of them who went into business again adopted better accounting methods.

The Government of the United States, like these merchants, has no balance sheet. For 130 years since its establishment the Treasury Department, acting for the Government, has kept only a cash account, and publishes only a cash account. What comes in is called income. What goes out is called expense. To illustrate—when the War Finance Corporation loans money for which it takes good security, and for which it retains a bill receivable, the money is checked out of the Treasury to make the loan, and the Treasury lists it as an expense. When the



Government sells real estate, which is a reduction in capital investment, it credits income. As a result of this archaic method, it takes a set of experts, at any given time, to inform the President or Congress as to what are the real expenditures of Government or the real income of Government. The same kind of bookkeeping formerly existed in the Shipping Board, but Lasker got out a balance sheet notwithstanding. There is nothing impossible about its correction. You do not want to allow a condition to exist in Government accounting under which it takes the Budget Bureau several weeks to figure out whether the United States Government for the first six months of a fiscal year, is living within its income. Get out your balance sheet, the capital items of which must at first be largely estimated. But it will be a starting point. The capital items can be corrected through gradual inventory. But from the time that balance sheet is started, so far as the current relation of real income and real expenditure is concerned, the Executive and Congress and the public can be kept informed.

Now, the best investigation which we can make shows that during this first six months we have lived within our forecast of \$3,974,000,000 expenditures. I am very hopeful that the end of the year will show that we have more than done it, because I believe that the President's attitude in connection with economy and efficiency is being met by a loyal spirit of co-operation on the part of this great business organization, which has extended, through its influence, all over this great country. . . .

All this great work of coördination in all governmental routine business, notwithstanding the immense results already accomplished, is but in its inception. It has been my purpose to explain its importance; the fundamental nature of the principles which underlie it; its immense influence on the proper conduct of the business of the Government, both in the present and in the future; its absolute necessity as providing the only agencies in the hands of the President by which he can carry out his responsibilities as the head of the business organization. When the President becomes indifferent to this duty, and not until then, will its existence be in danger. With all the great burden of national and international policy upon his shoulders



he will still do his full duty to this organization. Shall not we all endeavor to do our duty to him and to this great Government which it is our privilege to serve? Will you not all rise with me while I pledge him again our united effort? [The entire audience rose. The President of the United States, followed by the Vice President and the members of the Cabinet, then rose.]

Mr. President, speaking for the body of the business organization of Government before you, for the Chief Coördinator, General Supply, and his staff, your agents, and for the activities represented here, we pledge the best that is in us to your service and that of the Government.

We pledge ourselves to carry out your policy of economy and efficiency in the conduct of the routine business of Government—to watch for small economies, knowing that in a business as great as this their aggregate will be enormous—to redouble our efforts to have the particular work in which we are engaged so carried on as not to handicap other departments to the detriment of the interests of the unified plan and method which you impose upon us—to look upon our work from the standpoint of good citizenship—to give to you and this Government which we love so well, as good, if not better, service than is commanded by private enterprise—to stand together, as man to man, in a common effort for a great common cause under your leadership.

THE PRESIDENT. I thank you very much, gentlemen.



# HERBERT FRANCIS de BOWER

## THE PRICE OF SUCCESS

H. F. de Bower, writer and speaker on business topics was born at Dane, Wisconsin, and graduated from the Law School, University of Wisconsin.

I OFTEN wonder what it is that brings one man success in life, and what it is that brings mediocrity or failure to his brother. The difference can't be in mental capacity; there is not the difference in our mentalities indicated by the difference in performance. In short, I have reached the conclusion that some men succeed because they cheerfully pay the price of success, and others, though they may claim ambition and a desire to succeed, are unwilling to pay that price.

And the price is—to use all your courage to force yourself to concentrate on the problem in hand, to think of it deeply and constantly, to study it from all angles, and to plan: To have a high and sustained determination to put over what you plan to accomplish, not if circumstances be favorable to its accomplishment, but in spite of all adverse circumstances which may arise—and nothing worth while has ever been accomplished without some obstacles having been overcome: To refuse to believe that there are any circumstances sufficiently strong to defeat you in the accomplishment of your purpose. Hard? I should say so. That's why so many men never attempt to acquire success, answer the siren call of the rut and remain on the beaten paths that are for beaten men.

That's the price of success as I see it. And I believe every man should ask himself: Am I willing to endure the pain of this struggle for the comforts, the rewards, and the glory that go with achievement? Or shall I accept the uneasy and inadequate contentment that comes with mediocrity? Am I willing to pay the price of success? And the time to begin to pay is *now*.



# FREDERICK H. ECKER

## THE HUMAN FACTOR IN THE BALANCE SHEET

Frederick H. Ecker is vice-president of the Metropolitan Life Insurance Company and President of the Chamber of Commerce of the State of New York. He was born in Phoenicia, New York in 1867, and has been with the Metropolitan Life Insurance Company since 1883. The following address was delivered before the convention of the New York State Bankers' Association at Montreal, Quebec.

It is a privilege to bring a cordial greeting to the members of this Convention and our Canadian friends from the Chamber of Commerce of the State of New York.

In these surroundings one could not but be reminded of the friendly relations existing between the United States and Canada for over one hundred years and view with satisfaction this long period of unbroken peace, our frontier consisting of an invisible line with no fort on the borderland. Meetings of business men from various countries and the transaction of business between men of different nations, are, perhaps, the best provision against future wars.

I assume you are here to exchange views, compare experiences and discuss problems of banking and that you are finding, year by year, a closer and closer relationship between banking and every form of commercial and business activity.

While originally the merchant was also the banker, for a long period of time the banker has been quite distinct from the merchant, and, not infrequently consulting the merchant for his judgment in shaping the policy of the banker. Latterly, however, conditions are so changing that the banker is becoming more and more of a business man himself and, indeed, a merchant, as that term is usually understood. The banker's commodity is money—money or credit, which is the same thing.



The same laws of supply and demand that affect the prices of merchandise, obtain in fixing the price of money, which is dealt in the same as any other commodity.

The up to date banker's judgment of business conditions determines his own course and, to an increasing extent, that of his customers. This suggests on the part of the banker, a large degree of versatility in his knowledge of a great variety of phases of business endeavor. The banker must give his customer an opinion. It is always one of judgment. It isn't, like the lawyer's, based upon the written law or the decisions of the courts. While the banker deals with his own commodity as a merchant, he also has much responsibility in advising with respect to transactions in commodities in which they deal.

Not infrequently, advice may run contrary to the banker's own interest. There are times when it may well appear to be the part of wisdom to increase stocks of merchandise and to advise the customer to borrow for the purpose, even though loanable funds are scarce and the banker is "put to it" to find ways of meeting promises on agreed upon lines of credit. At other times, such as at present, it may be that counsel should be given against borrowing, because the outlook appears to be unfavorable to the accumulation of stocks, even though money is easy and the banker would like to have his funds occupied. The successful merchant understands credits. If he is a poor credit man, he fails. So does the banker and the best banker is often the one who has had training as a merchant.

#### UNIQUE ORGANIZATION OF NEW YORK CHAMBER

Our Chamber of Commerce of the State of New York, popularly known as the New York Chamber of Commerce, has many bankers in its membership. Some of its most notable activities have been guided by men engaged in banking. It is the oldest business organization in the United States, and of its kind, probably the oldest in the world. There have been Chambers of Commerce in some European cities for a longer period but they are in a measure a part of the Government of their respective countries and are not voluntary Associations



such as the modern Chamber of Commerce. In England, of course, there have been, for many years, certain guilds connected with industries, but these were always Associations composed of men in the same line of business and they did not conform with the modern idea of a commercial organization.

The New York Chamber still operates on a somewhat different line from most Chambers of Commerce even in the United States. The modern commercial organization is formed on the corporation plan, whereby the members delegate their powers to a small board of directors or executive committee which transacts business, presents resolutions and acts wholly in the name of the organization itself. The New York Chamber adheres to the old New England Town Meeting plan. Its officers and committees have no right to make public reports or give expressions of opinion on behalf of the Chamber unless the Chamber itself has first passed upon the question. Meetings are held monthly in the Great Hall of the Chamber, and, with the notices of meetings, there is sent, whenever possible, a copy of any report to be acted upon. Opportunity is given for discussion and the action finally taken may truly be said to represent the view of the entire membership.

In most commercial organizations to-day there is no limit as to membership, the idea usually being to secure as many members as possible, and firm or group memberships are in order. The New York Chamber limits its resident membership to two thousand, and individuals only are eligible. The membership of the New York Chamber not only embraces leading representatives in the commercial, financial and industrial life of New York, but in a large measure, of the whole country.

The Chamber occupies its own building, on Liberty Street, New York City, and its Great Hall or Meeting Room is one of the show places of America. There are, in the Chamber's collection, nearly 250 portraits and oil paintings of the officers, prominent members of the Chamber and other men identified with the growth of New York from the Colonial days down to the present time. Many of these paintings are extremely valuable.

The Chamber has long acted as host for distinguished visi-



tors and committees from other parts of the country and abroad, and in recent years has entertained in the Great Hall such men as the King of the Belgians, Cardinal Mercier, the Prince of Wales, Clemenceau, Balfour and many others.

The Chamber has been perhaps the foremost body in the United States in advocating the principle and molding the practice of commercial arbitration. At the first meeting of the Chamber, in 1768, a committee was formed to promote the settlement of commercial disputes by arbitration. To-day the Chamber has a very effective system for that work. Many cases come before it and its facilities are not restricted to members of the Chamber—in fact, on more than one occasion, foreign government have been a party to an arbitration.

The Chamber also conducts a series of commercial examinations. The successful applicants receive credentials from the Chamber and the Board of Regents in the State of New York jointly. The holders of these credentials receive special consideration in their applications for positions.

#### CHAMBER HAS RICH HISTORICAL BACKGROUND

The Chamber was organized in the Long Room of Fraunces's Tavern on April 5, 1768. The Tavern still stands at the corner of Broad and Pearl Streets, New York City, and it was there, in the Long Room, that Washington took leave of his officers. The Chamber still possesses the minutes of its first meeting, written by its Secretary, Anthony Van Dam, and there is a complete record of the minutes of all meetings from that time on. There are a number of items of routine interest in these early records. It was the practice in those days to fine a member, for non-attendance, one Spanish dollar, unless, at the next meeting, he gave some reasonable excuse for his absence. In the minutes of the early meetings will be found lists of those attending, those absent and the reasons given for absence. There are many entries to the effect that the person absent was "in the gout." Other reasons for absence were that a member was "absent in the Jerseys, in Brooklyn, or in Bloomingdale Village," the latter being at about the site of Broad-



way and 65th Street now. It is fair to assume that most of the members of the Chamber to-day live at a greater distance from the Chamber's building than the places just mentioned, but it is obvious that in those days the distances given were too far to be readily covered by the pedestrian or by the methods of conveyance then in use.

Another rather interesting fact, in view of recent legislation in the United States, is that the meetings were held at night and the Treasurer was required to provide, for the members present, tobacco, pipes, bread, cheese and beer. The Chamber still furnishes a buffet luncheon at its monthly meetings for all members who attend, but the last-named item is now conspicuous by its absence.

A rather interesting commentary upon the customs of those early days may be found in the following copy of the bill for a dinner given in Fraunces's Tavern, above mentioned, in 1784:

To	120 dinners at . . . . .	48/ 0/0
"	135 Bottles Madira . . . . .	54/ 0/0
"	36 ditto Port . . . . .	10/16/0
"	60 ditto English beer . . . . .	9/ 0/0
"	30 bouls Punch . . . . .	9/ 0/0
"	8 dinner for Musick . . . . .	1/12/0
"	10 ditto for Sarvis . . . . .	2/ 0/0
"	60 Wine Glasses Broken . . . . .	4/10/0
"	8 Cutt decanters broken . . . . .	3/ 0/0
"	Coffee for 8 Gentlemen . . . . .	1/12/0

Of course, the significance of the above bill is in the number of gentlemen left who were able to partake of coffee.

However, I must abandon these interesting excursions into Colonial history and come to the subject to which I have been asked particularly to address myself—

#### THE HUMAN FACTOR IN THE BALANCE SHEET

More and more, in the banking business as in industry, the attention of forward-looking Executives is turning to that "concealed asset" which is not in evidence on any bank's balance



sheet, but is, nevertheless, a factor in every item on the statement. It's the Human Factor—the personnel and morale of the bank's employees; the degree of their interest in their work and their loyalty to the bank; their representation of the bank to the public—the facts that walk behind the figures and help make them what they are. This factor varies in proportion to the success of the bank's management in enlisting the whole-hearted coöperation of the bank's employees, and, as it varies, it affects, directly or indirectly, every figure on the bank's statement.

Fully aware of the definite dollar and cents value of *positive* rather than even neutral coöperation from employees, many banks have adopted, in the interest of their employees, various ingenious and commendable plans that go far beyond the pay check alone. Back at the beginning of the current calendar year, the newspapers printed almost daily announcements of liberal bonus payments to employees by various prominent banks. Profit-sharing plans reward efficient employees in many banks. Old Age Pension Plans for the benefit of faithful bank employees are quite common. Liberal Savings Plans encourage employees' thrift in several banking institutions. A large number of banks are helping their employees build estates through the medium of *Group Life Insurance*, and it is that subject that I have been asked to discuss briefly from what might be termed the vantage point of my dual capacity as banker and Life Insurance executive.

Recently there came to me a study made January 1, 1924, of the average salaries paid by nine representative New York City banks to the various classes of employees that constitute the "rank and file." Salaries of officers and officials were, of course, excluded. It is needless to say that these figures bear out the fact, quite commonly understood, that such salaries are lower than those paid in many mechanical and building trades.

These facts point to a condition which leads the thoughtful bank executive to give earnest consideration to any sound, scientific program that both helps the bank employee better his economic status and tends to increase his value to the Bank.



That Group Life Insurance apparently serves such a purpose, in the judgment of the executives of many important banks, is evidenced by the long and steadily growing list of banks whose employees are protected by this form of insurance coverage. The records of one Life Insurance Company alone show 90 banks and trust companies which carry Group Life Insurance in the total amount of \$28,462,321, protecting a total of 14,581 bank employees for insurance averaging \$1,952 per life. At the end of 1923, this one Insurance Company carried on its books slightly more than one-fourth of all the Group Life Insurance in force on all classes of risks in the United States and Canada. (It may interest you to know that more than 6,000 employers are now carrying Group Life Insurance substantially in excess, in the aggregate, of two and one-half billions of dollars.) If, for the other Life Insurance Companies doing a Group Life business, the ratio of Group Life protection on bank employees to total Group Life Insurance in force is approximately the same as for the one Insurance Company referred to, we would be warranted in estimating that almost 58,000 bank employees in the United States and Canada are protected by Group Life Insurance totaling approximately \$114,000,000. In other words, it is estimated that approximately one out of every four bank employees in the United States is now enjoying the sense of security that comes from Group Life Insurance protection, in an average amount approximating his annual salary.

#### WHAT GROUP LIFE INSURANCE IS

A brief description of the Group Life Insurance Plan may be of interest, particularly to those of you whose employees are still numbered among the three-quarters, unprotected by this form of coverage. A Group Life Insurance Policy is issued to an employer for the benefit of his employees at low cost wholesale rates, and *without* physical examination. Such rates are warranted on the assumption that men who are actively at work represent, as a group, men who must be in good physical condition, the low rate being further predicated on the reduction in expense of handling business in a wholesale way. Em-



ployees actively working are insured, regardless of age or physical condition. The amounts of insurance for the various employees are ascertained automatically on the basis of a predetermined schedule of benefits agreed upon between the employer and the Insurance Company. The minimum amount of Group Insurance usually issued on an individual life is \$500, and the maximum is normally \$5,000, subject, however, to increase when large groups of employees are protected. With banks, a popular plan has been a schedule of benefits insuring each employee for an amount approximately equalling the annual salary, which, in effect, guarantees to the worker's family, a continuance of his pay check for one year after death. A simple automatic master policy or contract is issued to the employer, and the Insurance Company furnishes for delivery to each insured employee, an attractive individual certificate reciting his privileges and benefits under the master contract, and containing the name of the beneficiary, nominated by the employee. New employees become automatically eligible for the group insurance protection without physical examination after a predetermined waiting period, which is usually either three or six months. As to employees leaving the service, the Group Life Insurance terminates automatically upon termination of employment, but the employee has the right (within 30 days after termination of employment) to convert his Group Insurance certificate into an individual policy of the Insurance Company of the same amount, at the prevailing commercial rate for his then attained age, and without medical examination.

A particularly popular provision of the Group Life contract is the clause providing that if an employee becomes totally and permanently disabled before reaching age sixty, the amount of insurance on his life shall become payable to him during his lifetime, in monthly installments. For example, a \$1,000 policy is paid in case of such disability in twenty monthly installments of \$51.04 each. If the disabled employee dies before the full face value of the insurance is paid in such installments, then the unpaid balance becomes payable in one lump sum to his beneficiary. It is noteworthy that for every ten death claims paid under Group Life Insurance, one claim is allowed on account of total and permanent disability.



Group Life Insurance as thus described, is restricted by the New York State Insurance Laws to employers having fifty or more employees whose lives are to be insured. To banks with fewer than fifty employees, however, the Insurance Companies offer a modified Employees' Insurance Program called "Wholesale Insurance."

An especially attractive feature of Group Life Insurance is its low wholesale cost. For the ordinary banking institution, the premium averages less than \$12 per year per \$1,000 of insurance, or only a few cents per day per insured employee under a reasonably substantial schedule of benefits. During the early history of Group Life Insurance, and up until about two years ago, the usual practice was for the employer to pay the entire premium. Within the past two years, however, the trend has been decidedly toward what is called Coöperative Group Insurance, with employer and employee sharing the cost. Probably more than 75 per cent. of the Group Life Insurance now being written is on this coöperative basis,

#### COÖPERATIVE METHOD PAYMENT

The essence of this coöperative plan is that the employer, by arrangement with the Life Insurance Company, offers his employees an opportunity to secure the insurance at a fixed cost to such employees, which cost is often \$7.20 per year per \$1,000 of insurance, the employer paying the balance of the net cost for each employee covered. Insurance on this plan becomes effective only when and if 75 per cent. of the eligible employees signify their desire to secure the protection, through authorizing automatic payroll deductions to cover their share of the premium. The coöperative program gets away entirely from any suggestion of paternalism. It helps the employee help himself. The employer is assured in advance of the appreciation of his employees, because, as indicated above, the insurance can legally become effective only when 75 per cent. of the employees signify their desire to obtain the benefits of his group insurance program by contributing substantially toward its cost. If the mortality experience of the group is favorable,



the employer's share of the premium is subject, with the mutual Insurance Companies, to reduction by annual dividends, if and as earned.

One of the most interesting Employees' Coöperative Insurance Programs in force in America is that which the F. W. Woolworth Company offers to its executives, officials and the local managers of its stores, which number more than fourteen hundred. Through its Coöperative Insurance Program, the Woolworth Company has helped to secure, at a cost of only approximately \$40.00 per year to each employee, Life Insurance protection in the amount of \$10,000 together with total and permanent disability benefits of \$345 per month, payable for thirty months, in event of disability before age sixty. The balance of the net cost to the employer has been essentially moderate, particularly when considered in the light of the store managers' appreciation of these "\$10,000 estates."

In conjunction with Group Insurance Plans, some Insurance Companies offer to employers and employees, without additional cost beyond the stated premium, various Service Programs. The Group Service Program of one Company may be illustrated briefly under the four following headings:

1. A Free Visiting Nursing Service by visiting graduated nurses to sick employees. The nurse coöperates with the attending physician, renders the necessary bedside care while present, trains the members of the household in the proper method of caring for the patient between calls, and reports systematically to the employer on the patient's progress.

2. A Health Literature Service, the object of which is prevention and cure of disease in the homes of employees, and an education in the practical rules of health.

3. A Sales Service, of which the primary object is to bring employees to a thorough understanding and appreciation of the benefits of Group Insurance. This appreciation is brought about through posters, printed announcements of the plan, pay envelope inserts, write-ups of death claims and human interest stories for house organs.

4. A Business and Industrial Service, through which is given suggestions and information on various problems confronting



policyholders. Special emphasis is placed on the human element. This service is carried on by a corps of specialists who have up to the minute data and material on Business and Industrial Research, Management, Industrial Relations, Production and General Engineering Problems, including Safety.

Many of you have probably seen and heard extravagant statements regarding the advantages of Group Insurance. It will not do all that has been claimed for it. It is not, of course, a panacea for all organization ills. It is a sound economic step in the right direction. It has met successfully the acid test of experience, for the general consensus of opinion of those who have tried it is that Group Insurance does tie up a man's work interest to his home interest; that it does make for a more loyal and more coöperative body of employees; that it does tend to reduce labor turnover; that it does improve the economic status of the employee; that it does bring more adequate protection, not only to the homes of that large majority of workers who are under-insured, but also to that every seventh man who, because of age or physical impairment, is unable to secure other Life Insurance protection at any cost. Many a busy executive, whose interest in his employees impelled him to consider Group Insurance, looks back to the date of its adoption in his business with a satisfaction born of a consciousness of personal service rendered alike to his institution and to his co-workers. For those of us, whether bankers or merchants, manufacturers or railroad men, who seek to strengthen our business situation, it is confidently asserted that Group Life Insurance, as surely as any device which has yet been developed, will serve to enhance the value, on the asset side, of the Human Factor in the Balance Sheet.



# GEORGE F. EYRICH, JR.

## THRIFT AND CITIZENSHIP

The following address deals with one of the most important influences toward thrift in the country, that of the building and loan associations. It was broadcast in Cincinnati, Ohio. The Honorable George F. Eyrich, Jr., is judge of the Municipal Court of Cincinnati, Ohio, and is a director of the Victoria Savings and Loan Association.

THE Victoria Savings and Loan Association of Cincinnati is to-night celebrating its recent attainment of reaching the million-dollar mark in assets. It is Cincinnati's newest \$1,000,000 institution. We are signally honored in doing this by the presence of some of the pioneers and veterans, not only of our own association, but of the building and loan movement in general.

From them we get a glimpse of the past and out of that past comes visions of courage, self-sacrifice, loyalty and devotion. Their work and character give us incentive and inspiration. These men, who have made the building and loan movement the success which it is, had the vision to see the future possibilities of the home-owning idea. They realized that the hope of any to-morrow lies in the development of the plans made in the yesterdays. Well might we join with the author when he wrote, "They were men of vision with their feet on the ground."

The building associations of this great country of ours reach out and directly affect the lives of millions of our people, rendering a service which helps our citizens to help themselves. There is no nobler service. They are doing their part to build up a substantial citizenship. They teach thrift and the saving habit, thus implanting in the minds of all with whom they come in contact the value of conservatism. They encourage



the saver to invest his savings in a home and aid him financially toward that goal, thus not only teaching that person the value of systematic saving, not only directing his savings in healthy channels, but establishing him and his family in a home of their own.

The phenomenal success of the building and loan movement in the century of its progress, is due entirely to the fact that its objective makes for a better and more patriotic citizenship, for there is nothing which tends more toward stability among peoples than the resultant security and self-confidence of the home-owning man. Man without responsibility is likened to a ship without a rudder: he drifts with the tide, is blown by the winds and finally lands in the harbor of least resistance.

On the other hand, a man with a home of his own, with the responsibility of maintaining and paying for it, becomes a virile part of any community. His interest in the affairs of his city, state and nation is broadened by his holdings. He is willing and ready to lend his aid for bettering the place in which he lives, anxious, through necessity, to improve himself and family by strict attention to his work, and last but not least, is desirous of keeping himself informed of the changes taking place and the reasons for those changes.

Being a home owner, he becomes active where once inactivity was bearing him down; patriotic, where once the affairs of his country gave him no thought; respected, where once respect had no significance for him; industrious, where once his work was only a means toward an insatiable desire for the pleasure to follow; and now looked up to by his family, where once his association among them was only borne through family fealty; in fact, through the opportunity afforded by a building and loan association, he becomes a real American, respected by all with whom he comes in daily contact.

Is there any movement comparable to this which preaches the saving habit, affords home-ownership and makes for a happier and more contented people, thus making for the type of citizenship to which we point with pride?

This country, in order to continue its matchless progress, must preserve the quality of its citizenship.

The men, or organization, who develop thrift among the



people and give that thrift expression in the form of progress in the community, through the building of homes, are performing a real service to the nation. We believe that our institution is developing stability and love for country among our people and contributing to the happiness of our citizenship. This is a practice of true Americanism in which we find much pleasure in being engaged. It gives us hope for and confidence in the future of our country. No more important or happier service can come to any individual or institution.



# EDWARD A. FILENE

## WHY MEN STRIKE

Edward A. Filene was born in Salem, Massachusetts, in 1860 and is now president of the well-known Boston house of William Filene's Sons Co. His business success is vividly pictured by Mr. Justice Brandeis in his address on "Business—A Profession," which is printed elsewhere in this volume. "In 1891 the Filenes occupied two tiny retail stores in Boston. The floor space of each was only twenty feet square. . . . Twenty years later their sales were nearly \$5,000,000 a year. In September, 1912, they moved into a new building with more than nine acres of floor space." But this great business success was not attained by mere devotion to money-making. As Mr. Brandeis points out, "The Filenes have accepted and applied the principles of industrial democracy and of social justice." Mr. Filene has been prominent in business and civic organizations, and he has often spoken on labor and industrial relations. In this address, "Why Men Strike," he is offering not the remedies of a theorist but those which he has actually tried and found practicable. It was given before the Economic Club of New York.

WHY do men strike? Primarily because they instinctively dislike to be bossed. All men dislike to be bossed, employer and employee alike. They dislike it because experience has shown that no man is wise enough to have autocratic power over another man. Being mere mortals, at our best, we make mistakes; and if these mistakes affect other men who have to submit to them, they are liable to exaggerate them and rebel against them. They believe that if the decision had lain with them the mistakes would not have been made.

Constructive criticism of a kindly nature is scarce. But the average man finds it easy to criticize the mistakes and evils in a thing. There is, therefore, a tendency on general principles to criticize and resist the employer. If the major part of



strikes is to be avoided we employers must recognize that the inevitable and normal trend is this way. By careful study of the whole situation and wise, sympathetic organization we must meet the tendency.

Men strike because they are injured by real mistakes or because they believe themselves to be injured by the terms of their employment. In such strikes they are often unsuccessful and the grievances remain. For these reasons they sometimes dwell upon the objectionable features of their employment until they become tense and bitter. There grows up in consequence a distrust or hate of the whole present system. Irresponsible leaders who voice and trade on this discontent easily get a following. There is also a reaction toward socialism and communism which are presented as panaceas for the ills that are complained of.

#### REACTION TO SOCIALISM OR COMMUNISM NO REMEDY

For many years I have studied carefully the relations between employer and employee, under our so-called capitalistic system. I have also studied socialism and communism as proposed substitutes for it. I am forced to the conclusion that as men are constituted at the present time socialism and communism are not practical remedies. I am convinced also that the greater part of the wealth of employers is legitimately gained and that all the world is richer because of their wealth. Henry Ford is not the only man who has become rich through serving the public. Many an employer's wealth has been, as Mr. Henry Holt has well pointed out, "derived from processes and economies of his own devising and directing without which his income would not exist at all and the income of his employees would be less."

But firmly convinced as I am of this truth, I am just as firmly convinced that the present wage system is not infallible or final, but is only a step on the road from serfdom and slavery to improved forms of just and effective coöperation that the experience and wisdom of men will evolve from generation to generation. But as the present system is the road that must



for the present be utilized for the upward march of all of us, employer and employee alike, we employers will do well to study it carefully with the object of understanding its weaknesses and remedying its defects.

My study of industrial relations has convinced me of four things:

1. That in a political democracy such as ours the autocratic control of industry by employers is a fruitful breeder of strikes and is in the long run impractical;

2. That we often pay counterfeit wages when we intend to pay real wages, thus causing discontent, conflict and strikes;

3. That the present so-called capitalistic system has accumulated and is still using, outgrown ideas and customs that are needlessly offensive to our employees, and that it needs to be brought up to date;

4. That the basic remedy for the evils of industrialism and hence for strikes lies in making business a profession—that is, in realizing, in act as well as in thought, that a business has no right to make a profit except as it serves the community.

Let us briefly review these four conclusions:

## I. INDUSTRIAL AUTOCRACY AND DEMOCRACY

All of us employers are believers in the right of private property. Almost all of us translate that faith, consciously or subconsciously, into a conviction that our property is so completely our own that society should keep its hand off of it. We hold that if it must touch our property at all it should do so only to the slightest possible extent, and only after having first recognized and acknowledged, that it was interfering with our rights. Of course any analysis of this position shows that it is not very sound. It amounts to setting up property rights as superior to personal rights; to an appeal to society to safeguard our selfish interests against the common interests of the society to which we appeal; to an insistence at times on the duty of government to protect us in our imagined and artificial rights to the detriment and loss of the whole group of citizens of which we are a part. And this view tends, unfortunately to develop an autocratic spirit among us.



Applying this idea of property as exclusively our own to our relations with our employees, we probably feel that we have undoubted right to determine the conditions under which these employees shall work, provided we do it lawfully. And here we find one of the reasons why men strike—a source of grievance which can be shown to be the real cause of many strikes where other reasons are put forward. Most of our employees—all of those who have been educated in this country—have been taught from childhood that it is their inalienable right as freemen to have a hand in determining the political laws under which they live. They have heard it reiterated by their teachers in the public schools and by the interpreters of our free institutions on every public occasion. They read it in the daily press.

Men so taught are not going to stop short of applying this axiom, that grows out of the political system under which they are governed, to the industrial system under which they live and labor. Inevitably they are claiming the right to have an effective voice in the determining of conditions under which they work. These economic conditions are even more important to them than the political conditions. They have occasion for the expression of their political views at infrequent intervals. They are conscious of the exactions and burdens of government only now and then. But the urge to have an adequate voice in determining industrial conditions is daily, yes hourly, insistent. Every accident that is costly to labor, every additional expense in their living, every new baby, every new ideal, every new material desire such as an automobile or a house, serves as an occasion for reopening the question whether their wages are justly and generously determined. The result of such questioning is surely a further incentive in their minds to the greater assertion of their rights, as the preponderant human factors in industry, to have a voice in the control of conditions of labor and of the rate of wages. And this assertion of right, if opposed by the employer, often means another strike.

Then to this is added the periodic recurrence of bad times, with its masses out of employment, and the fear of the loss of the job—one of the most terrifying apprehensions of the average workingman with a family. Under these conditions men



feel themselves compelled to fight, by strikes or otherwise, for a greater voice in determining the conditions under which they labor. They are led on by the idea that if they have this greater voice they will so regulate and control production and distribution that not only will there be no fear of loss of the job, but there will also be sufficient wages to satisfy their needs and their desires.

My own life-long experience and study as an employer convinces me that autocratic control by employees would be even worse than autocratic control by employers. There is nothing in democracy that can perform miracles in production and distribution. There is nothing in the democratic principle in industry that in itself will take the place of expert knowledge, technical skill and trained industrial vision. No man in the factory, whether employer or employee, if he were hurt by a machine, would be willing to have a committee of his fellow-workmen meet and vote how badly he was hurt and how he should be cured. They would send for the trained, skilled specialist, the doctor or the surgeon. Likewise, when the business is hurt, it cannot be cured by a vote of management-sharing employees, unless those so voting are mentally and technically trained to know what they are voting about and are basically so interested that they will put their best into their decision.

It all comes to this, that autocratic control whether by employer or employee, is bad—the one almost as objectionable as the other; and that men are striking to-day as a protest against autocratic control by capital, and as the most effective way of expressing their demand for an adequate voice in the conditions under which they work. They are vitally interested. They will continue to strike until provision is made for giving them adequate representation in boards of directors or in those shop committees, by whatever name they may be called, in which employers and employees work hand in hand to advance both the business and the legitimate interests of the human beings who put their lives into it and get their livelihood from it. This is largely recognized by employers now and the growth of these joint committees has for some years been marked.



## 2. COUNTERFEIT WAGES

But even if joint-control of management is immensely successful it will not alone remove all the grievances that make men strike. It is necessary now to examine into the second of our causes.

A large proportion of the industrial disputes and strikes are due to the fact of the employee receiving an inadequate wage without the direct fault of the employer. An industrial system that subdivides the manufacturing process until the individual worker is only a part of the machine, and which then denies him participation in management, must of necessity leave him with little if any interest in the business. His main concern will then be in the wage return he gets for his work. Under such conditions, any interference with those wages that reduces their purchasing power, is a serious matter, sure to create discontent and conflict.

"Counterfeit wages" is a term that I have invented—whether good or bad you must judge—to characterize this inadequate wage that comes about from some of the many causes that reduce the purchasing power of money. Counterfeit wages are any wages however large they may be in dollars that will not buy the necessities of life, and enough luxuries to make working for necessities a desirable thing and also to enable the recipient to make modest but adequate provision for sickness and old age. Counterfeit money has no value. Counterfeit wages have too little value when measured against the purposes which wages must serve. It is not a question of how much a man receives but of what he can buy for what he gets. Wages may double, but if prices more than double then wages are counterfeit to the extent that prices have outrun the increased wages.

The causes that turn a good wage into a counterfeit wage are various. The speculation or the profiteering that raises the cost of homes, or the rent of houses, factories or shops may make a draft on the pockets of numberless employees that goes far to turn wages that have been adequate into counterfeit wages. Speculating or profiteering in the necessities of life has the same result. Manipulation of securities of public serv-



ice corporations that raises the price of street car fares, gas and electricity helps to turn a fair wage into a counterfeit wage. The enactment of tariff laws that by crippling our foreign customers shuts down our factories at home, or, by fostering bad trust agreements or undue profits, increases the cost of domestic goods, helps to make wages counterfeit. The merchant who by costly methods of retail or wholesale distribution adds unduly to the manufacturing cost of commodities makes inadequate and counterfeit a wage which might be adequate if goods were sold with less expense. The excessive fixed charges that result from watered stocks and from capitalizing expenses, or unfair "good-will" values, raise the living cost of the purchaser and increase the counterfeit margin of his wage. The inefficient and expensive government, local, state and national, that results from our easy-going American methods of choosing untrained administrators and from the partisanship that neglects the principles of good government in the effort to get and keep office, cuts down the value of every dollar that goes into the pocket of the workman—helps to make them counterfeit. The limiting of output by labor unions, resulting in fewer and higher-cost products, is a method by which the workingmen themselves turn their own dollars and the dollars of other wage-earners into counterfeit. Wittingly or unwittingly, employers and employees alike are often wage counterfeiters.

The fact that wages however large will not buy the things our employees want and need, induces discontent and a sense of being thwarted and wronged. This discrepancy between income and needed outgo makes men ready to listen to the irresponsible agitator who tells them that they are deliberately and constantly being robbed by us employers or by organized finance.

The method of thinking of wages in terms of dollars rather than in terms of commodities, recreation and savings is one that must be changed. There is nothing sacred about it. Together with many other unscientific and defensible features of civilized life, it just "happened" to grow up. Discontent and strikes as a result of counterfeit wages will continue until a method of determining wages is adopted that will keep them fairly proportioned to the outgo essential to the maintenance of the Ameri-



can standard of living—a standard on which we Americans justly pride ourselves and which we employers are generally as willing to pay as our employees are to receive.

The return for paying genuine wages rather than counterfeit more than makes up to the employer and to society for the extra money expenditure. The genuine wage tends to provide happy, healthy, contented and loyal employees.

If their wages are adequate to provide the necessities of life for their families and allow also for recreation and provision for illness and old age, they are increasingly freed from worry and are thereby made more efficient employees. If their wages enable them to buy freely, the value of the American market is maintained, to the profit alike of the manufacturer, the farmer and of the workman who makes and the merchant who sells the product of the factory, mine and the farm. Best of all, it will remove one of the most fertile causes of strikes.

An important part of the responsibility for the adequacy of wages must be assumed by us employers. We are sometimes little schooled in theories of social welfare, have little imagination outside of our own immediate field of business management and are prone to think of our duties in terms of money-success or money-failure to the exclusion of terms of human welfare. It is most often members of our own employer class, also, who turn real wages into counterfeit. This being the case we cannot easily justify ourselves in taking a position of irresponsibility in the premises. The responsibility for reducing the excessive costs of retail distribution belongs to me and to my fellow retail merchants. We employers should fight all excessive capitalization whose fixed charges help to turn into counterfeit the otherwise adequate wages we pay our employees. Our men of finance should see that the English law is adopted and enforced that requires a statement to be made to every purchaser of stock showing the promoter's profit and the real assets and liabilities of the Company. It is up to us to help provide credit unions or other safe and democratic means of saving and investing earnings. The training of the wage-earner in the use of his money so that by purchasing merchandise of good quality at the lowest possible price he will help to keep his wages real, is also our responsibility at least



to a degree. Our responsibility is at least equal to that of our employees to see to it that they are not compelled to pay a street car fare of 10 cents to get to and from our places of business when devoted and wise administration of public service corporations might make 5 or 7 cents adequate. The same thing applies to railroad fares and freight rates. The responsibility to provide comfortable, attractive and sanitary housing at fair prices primarily belongs to the employer of labor. In any event we are responsible if we allow speculation in land and housing so to increase rents as to make wages counterfeit.

Our influence should be thrown, I believe, against excessive tariffs and other forms of interference with trade that, if they increase the profits of the employer at all, do so at the expense of the wage-earner, of the farmer, and of the general public.

We employers should also make use of the price indexes provided by the Department of Labor at Washington, and by several private agencies, as a scientific and business-like aid in an attempt to solve the problem of counterfeit wages through use of a sliding wage scale. It may be that the stabilization of the purchasing power of the dollar along the lines advanced by economists will sometimes help to remove some of the problems of the counterfeit wage. A scientific solution is highly desirable but may take many years to bring about.

If we employers are to have fewer strikes, in the meantime, we must learn to think more of wages in terms of what they will buy than in terms of dollars and cents. When we do this we shall do away with many of the causes that make wages counterfeit. Because a man belongs to our club or our church will no longer be a reason for our standing by supinely and allowing him, by manipulation, speculation or profiteering to make counterfeit the wages we pay.

### 3. OUTGROWN FEATURES OF THE WAGE SYSTEM

Let us now turn to a third reason why men strike.

We all recognize the truth of the statement that our present so-called capitalistic system is still using inherited ideas and



customs that, although not discarded, have really been outgrown. We know also that it needs to readjust its ideas, get rid of old abuses, and reduce the number of points at which friction between employer and employee is generated. Because I am not ready to burn my house down is no reason why I should not repair or replace a dangerous plumbing system. Because we are not ready to destroy the present organization of industry and put socialism or communism in its place, is no reason why we should not get rid of its abuses and bring it up to date.

Many employers and important organizations have made and are still making attempts further to humanize and improve our industrial system. One of the most significant, as well as most courageous, is that made by the Federal Council of Churches of America in formulating and publishing its social creed. This social creed is of very great significance, emanating as it does from a body that represents substantially a half of the American people, and which is one of the most conservative elements in our American life.

This formulation is a creed and an ideal rather than a program of action. Difficulties and differences of opinion will no doubt be encountered in forging these ideals into a working program. Some of them may need to be restated and revised. It is a statement, however, which employers cannot afford to overlook or ignore. Progress is going to be made toward their achievement and leadership will come into the hands of those who undertake to apply, in good faith, such principles as the churches have here formulated. It can hardly be doubted moreover that the stability of our social and economic institutions will depend in no small part on the growth among employees of confidence in the right-mindedness and right-heartedness of the leaders of business and industry.

I do not have time at my disposal in which to discuss at length a social program. I may be indulged, however, in pointing out certain as yet partially achieved goals which a consensus of informed opinion, both among employers and employees, recognizes as practical and just. This moderate program, if achieved, would go far to do away with strikes.



The right of employees to a voice in determining the conditions under which they shall work and to a stable and living wage have already been dealt with. Other goals that are now generally recognized as right and just, include :

- (1) the right of employees to unite for purposes of collective bargaining;
- (2) a gradual and reasonable reduction in hours of labor;
- (3) compensation for industrial accidents as a just charge on industry;
- (4) the right of labor to be safeguarded in all matters pertaining to health, steady employment and good working conditions.

Men and women fit for American citizenship, the working hours of whose lives must be spent in stores and factories, in mines and on farms and railroads, must and will demand just solutions of such problems as are presented by these statements of principle. It is to the advantage of us employers to lead in finding these solutions. It is to the advantage of the consumer and of society that we shall do so. If the elimination of outgrown ideas and the righting of old wrongs is left to labor alone, wage conflicts and strikes will continue on an increasing scale. The strike is their principal weapon. If they are forced to fight for their rights they must and will use it.

A great employer of labor said to me during the War, "When we employers in the past have had the advantage of our employees by reason of an over-supply of labor, we have used it for our own selfish ends. Labor now has the whip-hand and is merely doing to us what we have done to it in the past. I wonder," he added, "which of us will be wise enough to end this wasteful process of industrial conflict by first using its period of power wisely and generously?"

The opportunity of the employer has now arrived. The future relations of employer and employee will depend in no small degree and on whether or not employers as a group, by hard thinking and friendly conference with our employees, go honestly at work to bring the industrial system up to date.



## 4. THE BASIC REMEDY FOR STRIKES

Important for the establishment of good industrial relations as are the three matters of which I have spoken, there is in my judgment a fourth reason of a still more fundamental nature—namely, that business shall more and more become a profession and be carried on in a spirit of service to the community.

The motives with which the employer directs his business and with which the employee works will in the last analysis determine whether there will be industrial war or industrial peace.

Asked recently by the editor of *The Annals* to prepare an article on "A Simple Code of Business Ethics" as one of a series of studies on the ethics of the several business and professional groups, I ventured to base it on two brief formulas:

- (1) That a business in order to have the right to succeed, must be of real service to the community;
- (2) That real service in business consists in making or selling merchandise of reliable quality for the lowest practically possible price, provided that merchandise is made and sold under just conditions.

The merchandise must be sold as cheaply as possible so that as many as possible may buy as much as they need. It must be made and sold under just conditions, as one must not oppress his employees in order to make merchandise cheaper than it should be to his customers. But the chief point of the ethics of the profession of business, as I understand it, is that the great buying public is to be served by giving them dependable merchandise at an ever cheaper and cheaper price.

One of the tragedies in our industrial life to-day is that when we employers are finally successful and the difficulties and perplexities are over that in our earlier year prevented us from giving full coöperation in solving the problems of our employees, and we have at last gained the financial freedom that enables us to decide questions between ourselves and our employees on their merits, we so often fail to use our new-found



freedom to this end. We often begin, instead, to use our thought, time and money to build bigger houses than we need, to buy too expensive pictures and live in a needless luxury. We men have learned to simplify our clothing so that in neither cost nor styles is there a yawning gulf between those of employer and employee. But only rarely do we keep our living simplified to any such degree. But even if we are too sensible or public spirited for ostentatious display, we feel that it is our first duty to give large sums of money to hospitals and other philanthropic purposes. For these and like reasons, we throw away the opportunity, won by a life of successful labor, to heal the wounds of industry.

Philanthropy becomes a sin and an offense, when it uses for charity the earnings of industry that should be used for justice to employees and the public.

The first legitimate use of large profits, and the main use, is to reduce prices. These lower prices will, in turn, cause increased demand, increased production and increased total profit at which point prices can again be reduced. It is worse than useless to merely increase production. Prices must at the same time be reduced enough to bring in the greatly increased number of purchasers needed to absorb this greater output. Employers are wrong when they endeavor to obtain mass production through lowering wages to a degree that lessens the number of possible consumers for their product. Employees are wrong when they try to get higher real wages or more work through limiting output. Both will find it far more profitable in the long run to join hands in efforts to furnish reliable and essential merchandise to the public at prices lower than it has been sold before. In this way they will greatly increase the number of consumers and increase the demand for workmen. They will at the same time increase wages, and the purchasing power of those wages.

When this spirit of service comes to be generally recognized for what it is, namely, good business as well as good ethics, the reasons for strikes will have been greatly lessened. The co-operation that will result between employer and employee—between management and labor—is perhaps the nearest we shall need to come to common ownership or the socialization of in-



dustry. Perhaps here is the door through which the strike will make its exit and industrial peace will enter.

The practical and compelling thought in any analysis of the reasons why men strike is found in the fact that the elimination of the cause of strikes is not only good ethics but equally good business. We employers like to think of ourselves both as good business men and as good Americans. In studying and removing the reasons for strikes, we shall find the road to that real coöperation with our employees that will largely satisfy our aspirations in both directions. And a grateful general public, which after all is most concerned in the solution of the industrial question, will applaud and reward our success.









HALEY FISKE



# HALEY FISKE

## FIFTY YEARS OF LIFE INSURANCE

Haley Fiske was born in New Brunswick, New Jersey, in 1852, and became president of the Metropolitan Life Insurance Company in 1919. The following address was given before the Annual Meeting of the Association of Life Insurance Presidents, December 4, 1925.

WHEN one compares the amount of life insurance in force, the plans of insurance, the policy provisions, the insurance laws, of 1874 with those of 1924, one is tempted to say that the history of life insurance in the United States and Canada is contained in the half century. At the end of 1874 there were less than eight hundred and fifty thousand policies in force; 1924 closed with over ninety-two millions. The amount of insurance in force increased from two billions to sixty-seven billions, the business written in the respective years from one hundred and fifty thousand policies to eighteen and a quarter millions, for from three hundred and sixty-two millions of insurance to fourteen and a half billions; the premium receipts from ninety-two and a quarter millions to two and a quarter billions; the assets from four hundred millions to over eleven billions; the payments to policyholders from sixty-eight millions to one and a quarter billions. These figures exclude fraternal and assessment insurance, which had its great start in the first decade of the half century period and which has increased from one and a half billions in 1885 to eleven billions at the end of last year.

Fifty years ago there were in use twenty plans of insurance; to-day, one company uses over a hundred forms of policies.

A whole volume of life insurance history is contained in the comparison of policy provisions at the beginning and end of the fifty years. Perhaps I can best summarize the progress of



life insurance in its practical relations to the public by one illustration.

My own first insurance was in the Mutual Life nearly fifty years ago. It is interesting to contrast the provisions of my old policy with those of the same plan as now issued by the Mutual. A claim is now payable immediately, instead of requiring 60 days' notice. There are no travel restrictions; then, permit had to be obtained for travel in certain regions. Then, occupation was restricted; now, it is not after the first year, and, even as to the first year, very few restrictions. Then, suicide, except as result of disease or accident, exempted liability; there is now no exemption after the first year. Then, forfeiture for non-payment of premiums except for paid-up insurance after three years; now, after three years there is automatic, continued term insurance with options of cash and paid-up. Then, no basis of reserve expressed; now reserve on American experience table with three per cent interest. Then, if claim were refused, the claimant had to give notice of the Court in which he would bring suit; now, no such provision. Then, a policy charge of a dollar; now none.

Now there are concessions, then absent, for dividends after the second premium; privilege to exchange plan without medical examination; incontestability after one year's persistence. No avoidance for misstatement of age. A copy of the application is attached to the policy, and the statements are made representations, not warranties. In the old days, warranties were strictly construed and gave rise to much litigation of which Courts became increasingly impatient. Other present concessions are loan values; privilege of reinstatement within five years after lapse; and options of payment of claims either in lump sum, or by installments, or by annuities, or by deposit with the company at interest.

These improvements are of course common now to all companies.

The half century began under dark skies and threatening clouds which developed into a long and fierce storm. The panic of 1873 was a crash which involved all forms of investments and cut down values to an appalling extent. Real estate values were cut in two with consequent impairment of mortgages. In



1870 forty-four per cent of the assets of life insurance companies were on real estate mortgages. There was no doubt bad management. There was no doubt ignorance which led to reserving on assumed high rates of interest. It was not only the life insurance business that suffered, but all business. The railway corporations were hit as badly as insurance companies. The period was one of economic readjustment after the Civil War. About seventy life insurance companies out of a hundred failed. The income of the companies dropped over a third. It has been said that policyholders lost thirty-five millions of dollars. Life insurance by reserve companies had a bad name. New insurance written in 1870 was 588 millions, in 1879, 173 millions. The insurance in force in 1879 was less than in 1870, dropping from two billions to less than a billion and a half. Recovery began in 1879, which showed an increase of new business. The next year showed an increase of business in force; 1881 showed an increase in income. But it was not until 1885 that the insurance in force passed the amount in 1873. Assessment and fraternal insurance came into prominence and, in 1889, amounted to two and three-quarter billions of insurance in force, against a little over three and a half billions in the reserve companies.

Thus, one may say that the history of life insurance is comprised in the last forty years. The amount in force was doubled in seven years, was doubled again in nine years, was doubled again in ten years, redoubled in eight years, again in six years. The forty years have seen the life insurance in force multiplied thirty-three times.

Public sentiment about the system of life insurance, irrespective of its faults or success of operation, has changed from repugnance to a feeling that it is a kind of universal solvent of economic and social problems. Thirty years ago I had to meet a charge, in a legislative hearing, that life insurance was immoral and a form of gambling. It was denounced by a large Christian denomination. Agents were eager to get approval from ministers of religion. I can remember when extracts from sermons of Beecher and Talmage advising life insurance were widely circulated. Only twenty years ago I had to argue on the witness stand in the Armstrong investigation that Indus-



trial Insurance was not a gamble. No business in the world is to-day held in higher respect in the United States of America.

The half century of life insurance has witnessed a constant progress of evolution and, in some respects, of revolution. It was in 1875 that the Convention of State Commissioners of Insurance adopted a uniform blank for reports which, for the first time, required a perfect balance sheet. Since 1871 this convention has met annually and the business owes much to its deliberation and action. There has been a great improvement in its membership. There are no longer Commissioners who use their office as politicians or for company exploitation. The Commissioners to-day are friends of life insurance and protectors of and coöperators with honest insurance management.

It was in 1889 that the Actuarial Society of America was organized and in the same year the Association of Medical Directors. It would be impossible to exaggerate the good effect on the system and operation of life insurance of these two societies and similar societies since organized, both as to their separate activities and in their coöperative work. In 1913 the Association of Life Insurance Counsel was formed and its career has likewise been useful to the business in its learned papers and discussions on the problems of insurance practice in their relations to statutes and court decisions.

The foresight and wisdom of Paul Morton, when President of the Equitable, has been more than justified in his proposal to form the Association of Life Insurance Presidents. Its work has been and is extraordinary. It started with a few companies. Its wonderful organization by Robert Lynn Cox, carried on, since his resignation, by George T. Wight, has brought into membership most of the large life insurance companies that are eligible, and it now has fifty-eight member companies. Its work is to gather information about proposed and pending legislation, submitting it to the scrutiny of actuaries and counsel and giving advice to legislative committees as to its merits and demerits; and to distribute the information to the constituent members and to the press. It keeps up a large library of statistical information of great value. Its annual meetings, of which this is one, have been the occasion of the reading of



papers of great importance and interest on legislative, social and welfare economics, and its meetings have been notable through the presence of distinguished statesmen, experts in economics and in public health whose own activities lay outside of the life insurance business. In its work about legislation it employs no lobbyists. Lawyers and actuaries from the head office in New York make arguments before legislative committees and insurance officials, and submit briefs and suggestions. Individual companies seldom appear in connection with legislation. The day of insurance lobbyists has long since passed; and, with them, attempts at strike legislation. I have no desire to recall the sad old days of attack and defense, the jobs set up against the companies, the special legislation sought by companies, often undisclosed as to its effect. The testimony before the Armstrong Committee revealed a part of the story. Industrial insurance, which it was my duty to represent, had no part in this work, although for many years the object of fierce attack, sometimes honest but usually corrupt. Legislative attacks on Industrial insurance were defeated by appeals to policyholders and public opinion. It is all over and insurance official life is now worth living! The Presidents' Association and the American Life Convention, which is a similar organization representing other companies, are alert and effective, but, above all, honest and honorable.

I have mentioned the Armstrong Investigation. There is no need to tell of its origin or the details of its work or of the facts and situations it revealed. Perhaps it is enough to say that it resulted in the best insurance legislation the world has known; that it purified the business of abuses and set it forward as the cleanest, best organized and operated business in public relations that exists to-day. But one more thing ought to be said; and that is that, in the conduct of the investigation and the resulting legislation, the business owes a debt it can never repay to Charles Evans Hughes. Mr. McCall told me not long before he died that Mr. Hughes had been eminently fair; and there could be no better witness quoted. Industrial insurance especially is grateful for the judicial spirit Mr. Hughes showed when the influences around him tempted him to the endeavor to destroy it. I can never forget his painstaking-



ing study and his fairmindedness. And surely Ordinary Insurance (that is the insurance on annual, semi-annual and quarterly premiums) can now look back with gratitude on measures which at the time seemed harsh—the destruction of Tontine or deferred dividend insurance, the curb on assessment insurance, the limitation of expense and the temporary limitation of yearly business, gradually modified, and, now that the need has passed, practically put under the supervision of the Superintendent of Insurance, the restrictions on investments, the ending of personal official interest in investments, the provisions in 1909 for liquidation in place of the early scandalous experience in receiverships, the standardization of policy provisions, the differentiation of participating and non-participating insurance, the standards of valuation.

Generally speaking, the trend of legislation during the half century has been progressively good; in fact, the period has witnessed most of the regulatory legislation. It was in 1876 that notices of premium paying were first required. The first non-forfeiture law was passed in Massachusetts in 1861; and New York followed in 1879. Incontestability provisions date from 1879. The first law for cash surrender was passed in 1880.

On the general subject of investment, papers have been read at previous annual meetings of the Association which have set them forth fully. It is, therefore, only necessary to remark that the life insurance companies have pursued the plan of meeting the needs of the public, now specializing in railways when the country needed them, now in mortgages to meet housing demands, now in farm mortgages when agriculture required help, now in public utilities—street railways, gas, water and, lately, in electric development. And always a resource to meet the needs of Government, Federal, State, County and Municipal.

It was in the very panic period described that John F. Dryden had the courage to make a start of what is now called Industrial insurance, and in 1875 founded what is now the great Prudential Insurance Company. It was when the Metropolitan was desperately engaged in weathering the storm of that decade that Joseph F. Knapp of the Metropolitan followed Mr. Dryden to England and studied the business at first hand in the London Prudential. But not Dr. Dryden or his coadjutor, Dr. Ward;



not Mr. Knapp or his co-worker, Mr. Hegeman; or Mr. Rhodes of the John Hancock, dreamed of the future of the business. Industrial insurance is the outstanding achievement of the half century. It met with every sort of opposition at the start, legislative and official. More than one Commissioner of Insurance denounced it. Investigation after investigation pursued it. The press abused it. The old line companies and their agents ridiculed it. It has not only earned its place in the sun. It has better than conquered its enemies—it has convinced them. Perhaps the one Insurance Commissioner who constantly stood its friend was John A. McCall, of New York, whose faith and friendship prevented disaster to the Metropolitan. Afterward while President of the New York Life, he was a director of the Metropolitan. The friendship of these two companies has been historic and never closer than now under Darwin P. Kingsley and Thomas A. Buckner and the younger McCall. It was John A. McCall, in his address before the Milwaukee Convention of Insurance Commissioners in 1898, who praised the record and foretold the future of Industrial insurance, and first gave it the credit, now everywhere acknowledged, that it has been the great insurance educator, of immense benefit to what is called old line Ordinary insurance. Need I say more than that this business, begun nearly fifty years ago, will end this year with probably seventy-four millions of policies in force for thirteen billions of insurance!

Group insurance is another prominent feature of the period under discussion. Started by the Equitable in 1911, it is now practiced by many companies and ended last year with three and a quarter billions in force. It is of double importance. It covers with insurance three millions of working people. That is a blessing; but perhaps even more important is the coöperation it affords for mutual benefit of employer and employee and the improvement of the relations and the better understanding which it creates between capital and labor. Labor looked askance for awhile; but last year its representatives procured legislation permitting life insurance companies to issue Group Life policies to labor unions, and many of these unions have become so insured in various companies represented in this Association.



The half century has witnessed the entrance of Governments into the business and some of them have made insurance compulsory. Germany and Great Britain have been the leaders. And during the late War our Congress provided Government insurance at net rates for our soldiers and sailors. At one time the amount in force is believed to have reached nearly forty billions of dollars. If now the amount has fallen to less than three billions, this is only one more piece of evidence that insurance must have agents to introduce and keep it in force. The companies made no effort to twist Government insurance to themselves, but, on the contrary, advised men in the service to take it out and continue it; but doubtless many dropped the insurance because they preferred to place their own insurance or had not been sufficiently educated as to recognize its value. This action by Congress was of great benefit to the insurance company, by advising the need of insurance to millions of uninsured and, through fixing the amount at \$10,000, by educating the insured to the insufficient amount which they were previously carrying.

The agency system, of which we have just been reminded, has greatly changed. The agent of 40 or 50 years ago was often a man who had failed in other business. Gradually the general agency business grew up. Competent men had general offices and were in close touch with the management of the companies; they employed sub-agents, appointed, educated, helped and dismissed. The general agents were important people in the community and kept in touch not only with their home offices but with their policyholders. There are quite a number of these remaining in the different companies; but, as a system, it is passing. The former sub-agents are now agents. Renewals, which had a large part in the earnings of the general agents and kept them in touch with policyholders, are now often in the care of cashiers. I suppose one result of the change has been to add to the dignity and importance of the individual agent. Many companies do not employ part-time agents. Life insurance agency is becoming a profession. It is better paid. In 1898, the late Mr. McCall said the average earnings of over three quarters of his agents were about \$1,000 a year. In 1898, the Industrial agent averaged perhaps \$10 a week.



The Industrial agent, in at least one company, now earns on the average in Industrial and Ordinary, nearly \$3,000 a year. He is a salaried man with extra compensation for production. The New York Life Insurance Company has a system by which an agent who is competent and persistent earns an annuity; perhaps other companies have similar or other methods by which talent and persistence are rewarded, either by renewal interest or otherwise. Company loyalty is now the rule. The old days of "twisting" of agents are over. It was the Industrial insurance companies which set the right example and showed not only the wrong but the inexpediency of the practice of stealing agents from rivals. It was almost immediately following an address on this subject by an Industrial company Vice-President before a Convention of Life Underwriters that the "Big Three" were brought into agreement on the subject. It is all to the good to the companies, to the public, to themselves, that a life insurance agent is a self-respecting, professional man who has at heart loyalty to his company and fidelity to the insured. In 1883, the first Association of Life Underwriters was formed and the number grew. In 1890, the National Association was formed. The work of these Associations has improved the morale, has promoted friendship between rivals, has elevated the standards of agency, has helped the companies.

The "Big Three"! How well we remember the awe the expression inspired in the old days. And they were personified. It was not the Equitable, the Mutual and the New York—it was Hyde, McCurdy and Beers and, later, McCall. They *were* the companies. They dominated the business. They were the representatives of life insurance to the public, the Legislatures, the Commissioners. The days of personal domination are past. Doubtless there are giants now comparable with them; but they do not dominate. The business of the companies is too large, its ramifications too numerous, its complexities too great. Not that personality is altogether hidden. When we think of the New York Life, we still think of its President: but of a President Kingsley with wide vision, a statesmanlike mind, an orator, an author whose abilities have been at the service of the public, a defender of railway invest-



ment interests, a President of the New York State Chamber of Commerce, the highest office in the gift of the business community. With the Mutual we think of Mr. Peabody, an expert in law, finance, railroads and real estate, a guardian of assets. With the Equitable, we think of President Day as bringing to bear his acute legal mind on insurance and financial problems; and his great service to the company and the public of bringing about and carrying through the mutualization of his company. In those old days of the "Big Three," the newcomers, the "Big Two," had the respect of the three, but the public eye was not attracted. Only with their own people at first, Dryden and Ward, Knapp and Hegeman were the personifications of their companies. Public recognition waited, but it came. And now we see in Mr. Duffield a successor to Senator Dryden in insurance and, likely enough, in the United States Senate. We see in Frederick H. Ecker a financier upon whom Wall Street looks with admiration, a railroad expert whom the country looks to for counsel, an expert in real estate respected by the New York investors; the President of the Chamber of Commerce, as Mr. Kingsley was before him; but in each case not only the talents but these activities themselves are all brought to the service of the policyholders in the care of the assets and other interests of their respective companies.

And indeed the life insurance business has taken on wider and deeper relations to the public. The enormous assets make it responsible to the public to safeguard investments in which the public has so large a share, and the modern officer must be fit for this responsibility and perform it. The extraordinary number of policyholders, probably not far from half the population, and in Eastern cities a much larger proportion, put upon the company and its officers a responsibility as to public health and welfare. We see the companies attacking disease, offering diagnosis and advice to individuals, supplying them with health literature, coöperating with Government and health and school officials, reaching out to give education to the people and even to the children, in preventive medicine. The companies' official staff must now comprise not only insurance men but financial experts, social students, physicians, specialists in health, in welfare, in education, in publicity. It is not for



advertising that one company nurses free of charge its sick poor by two and a half million yearly visits, distributes literature on prevention and cure of sickness from practically every known disease to the extent of forty millions of pamphlets a year, broadcasts health talks, teaches physical culture by radio; publishes, in seventeen millions of copies of periodicals, its monthly talks on health, with no reference to insurance. It is the fulfillment of responsibility to one-sixth of the population covered by its policies. It is concern for public health.

It teaches Governments by experiments, such as reducing tuberculosis mortality in one city from 120 to 38 per 100,000; and, in another, infantile mortality in the first year of life from 300 to 96 per 1,000. It demonstrates cure from tuberculosis in a sanatorium to the extent of 84 per cent of its discharges. Its commission on public health surveyed the health agencies of the country; its commission on influenza made a discovery which greatly reduces mortality from a common type of pneumonia. It is about to undertake, through a commission, intensive study into the causes, prevention and possible cure of common colds. Common colds are said by physicians to be the most prevalent and serious menace to the health of the world, often causing more discomfort, inconvenience and danger than any other one ailment. The real cause has never been discovered and the problem is to find it out and prevent this form of sickness. It prays for the same work by other companies. It rejoices in the work they already do. It demonstrates that it pays, and the expenditure is justified in dollars and cents. It shows an extension of policyholders' average life in a period of eleven years, of eight years, as compared with four and a quarter years in the general population. It saves in death claims more than it pays for health extension. Its Industrial business gives it special opportunity and responsibility which Ordinary companies do not have. We rejoice that Ordinary companies—insurance companies generally—are doing so much for the financial and health advantage of the people.

The half century has been marked by the conversion of many stock life insurance companies into mutual companies, the outstanding instances being the Equitable, the Prudential and the Metropolitan. Millions of assets and billions of insur-



ance have been thus transferred to the ownership of policyholders. The serious question confronts insurance company management looking to the future, whether, with companies of large assets which confine themselves to life insurance, it is safe, regarding the interests of the policyholders, to leave the companies in the control of stock, with all the possible dangers that come from stock ownership in few hands, in view of the possibility that, by the death of the conscientious owners, stock control of the companies and their assets should pass into the hands of speculators and exploiters.

At the close of the half century, what a vista opens! Who can predict along how many avenues life insurance will march to the public good? Insurance against death, endowment or savings insurance, mortgage redemption insurance, sickness and accident insurance, both in money compensation and keeping life policies in force, corporation insurance on employers, group insurance on employees, old-age pensions. But is there any ill or contingency in life our business will not cover? Shall it be a security on partial payments for merchandise or bank or other loans? Shall it be rewards for public and private service? Shall it be unemployment? Shall it be the wide extension of old-age pensions? The movement for pensions has begun; agitation in England has been going on for years. We have made a beginning. American sentiment will not leave this to Government. Life insurance companies must prepare to do the business. Working people and clerical employees have no such pressing unsupplied need. The specter before wage and salaried men and women are death, sickness and accident, unemployment and dependent old age. It is the true function of life insurance to banish these specters. Life insurance now cares for death and illness and accident. The time will come when Legislatures will permit the companies to write unemployment insurance. Companies do not have to wait to provide support in old age. Individuals can buy annuities. In the United States the companies have not pushed annuities as they should have done. It requires an educational campaign. The people are not informed of the immense advantage of making sure their protection against improvidence in later life. But take corporations with numerous wage-earners and



salariied men and women. Do they not owe duties beyond payment of compensation? Is the compensation sufficient to provide for sickness and old age? Group insurance is proving the willingness of employers to engage in welfare work and furnish health and accident as well as life insurance. Can they not be persuaded to provide pensions? Some corporations have pension plans. Are they actuarially sound? Have there not been some unfortunate experiences? Life insurance companies are in the position to provide for annuities in groups that will be financially safe and that will enable corporations to reward persistence and faithful service by banishing care. The same things may be said as to employees of Federal, State and City Governments. It is known that some pension systems in use for years are unsound and in a precarious condition. Salaried employees are mostly underpaid; even if not, any margin for future security is small. Let Governments know that life insurance companies are anxious to serve them. Take the whole system out of political incompetence. Let the servants of Government who are the servants of the public feel that the future of themselves and their families is free from anxiety. How better can we spread contentment among all classes of people and put an end to popular discontent?

Whatever this future work shall be, it will be done by companies with high ideals, with deep sense of responsibility, with fraternal feelings toward each other; with agency made a profession, with aims for public welfare, for reaching the whole population regardless of race or condition of health, for a steady purpose to reduce morbidity and mortality, for reduction of rates and increase of dividends to policyholders.

The days of competition are not over. But instead of the old recrimination, personal attacks by press and cartoon, jealousy, mutual distrust, we shall have, even closer than to-day, a true corporate brotherhood, coöperation for the public good, such as is symbolized by this Association which has done me the honor of inviting me to address it.



# ELBERT HENRY GARY

## LABOR

Mr. Elbert Henry Gary, as Chairman and Executive Officer of the U. S. Steel Corporation, held what was probably the most important executive position in modern industry. Born on his father's farm near Wheaton, Ill., he graduated from the law school of the University of Chicago in 1867 and was for twenty-five years in the general practice of law, from which he retired to become President of the Federal Steel Co. From that time until his death in 1927, he was identified with the great steel corporation.

Judge Gary always believed that there was much in the business of great corporations which was open to public discussion. In a series of thoughtful addresses on different occasions he has spoken on many of the great problems of capital, labor and management. The address "Labor" was given at Trinity College, Hartford, Conn.

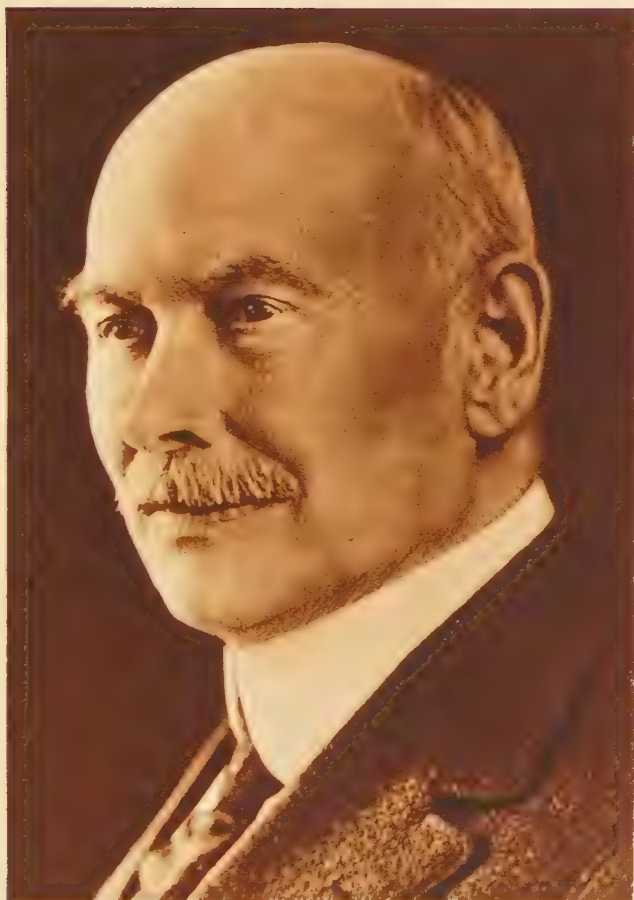
It is not yet fully realized what has happened to the world during the last five years; and in a much less degree can it be conceived what will occur during the next like period.

We know that in nearly every part of the globe the people are passing through a transitional stage which is uncertain and which presents new and difficult problems of great consequence. It is a time of suspense and apprehension.

We have been living in an atmosphere of disorder and devastation, as opposed to order and preservation; of deliberate, successful effort to utilize all the elements of human knowledge, skill and energy in the destruction of life and property, often in disregard of the laws of God and man. While it is impossible to measure the full effect of these conditions upon the human mind and disposition, it is apparent that in many cases it is degenerating and serious.

The means of personal communication have reached the point





ELBERT H. GARY







where practically the whole world is promptly informed of the actions and thoughts of the people of the different parts. Consequently the attitude of the inhabitants of one location may have an influence, good or bad, upon those who abide in other places; and therefore the responsibilities of all are now greater than ever before.

We are entering upon an era of readjustment and reconstruction. Many problems of vital interest affecting the future of the human race are presented for consideration as the result of the War, some of them new and others arising from the application of old principles to new conditions; and it is essential that we build on solid foundations for future developments. It is sufficient at this time to say that there is a feeling of anxiety which disturbs the minds of human beings generally; and it is of the highest importance that conclusions shall be reached which will aid in restoring confidence and serenity; decisions based on principles of righteousness and justice. It is probable the feeling of unrest and dissatisfaction, which has been extensively advertised, has been greatly exaggerated, especially as to the numbers affected; nevertheless in other countries to a large extent, and in this country to a less degree, there exists a belief that radical changes in Government control and administration are necessary. Agitation and propaganda, which are vicious and participated in by those who are totally unworthy, have had some influence even upon well-disposed persons. This is largely because of the abnormal conditions of mind, created by the military cataclysm through which we have been passing during the last four years or more.

It is the solemn duty of every individual, every aggregation of individuals, to assist in bringing about stable conditions which are healthful—morally, socially and economically; and if this shall be the effort of all it need not be feared there will be experienced the overthrow of civilization, the disregard of freedom and liberty or the protection of life and property, which occasionally an ill-advised or evil-intentioned speaker or writer proclaims is now threatening the world.

And there are momentous questions raised even by high-minded individuals, which demand our attention. In the discussions of the time, public and private, are contained what are



generally designated the labor questions. While some of them are more or less delicate and are difficult in treatment because of misconception of the facts and circumstances in particular instances, still I think there should be frank and full reference to and analysis of the underlying principles which pertain to this subject. The comments which will be made represent views which are entirely personal.

In referring to labor one naturally inquires what is meant by the term and whom it includes. In a comprehensive sense labor is performed by nearly every one in sound condition. Even physical labor is a large part of the daily work of the vast majority of individuals. The rates of compensation do not determine who are laborers, for they differ materially, depending upon circumstances. Labor is not confined to physical activity, but also includes mental exertion. The extent of effort or the hours engaged will not furnish a basis for determination; the possessor of wealth, or the one in control of its use, frequently, if not generally, devotes more hours daily to his business than the lowest paid and least competent of workmen; the capitalist usually works and the hand laborer, to a greater or less extent, not uncommonly has capital.

There is no standard for drawing an exact line between labor and capital. If one will call to mind the different kinds of business and consider carefully and in detail the pertinent facts applicable, these observations will be patent.

In the discussion of this matter, for the moment, the laborer may be referred to as covering both men and women whose principal work is physical, who require no special literary qualifications, or skill derived from long experience, and are often designated as wage-earners or workmen. They are the ones who are relied upon by the reckless, iniquitous, self-appointed disturbers of peace to assist in movements to override law and order, for it is assumed they are most easily persuaded.

Fortunately, the large majority of wage-earners cannot be influenced by considerations that are base or unreasonable. This is especially true in the United States.

It may be useful to bear in mind that in trying to arrive at a wise and just conclusion concerning the rights of the workmen the interests of four general groups must be considered,



viz: Labor, capital or employer, the consumer, and that part of the general public not included in the divisions especially mentioned. None of these should be overlooked, each must be fully protected within reason and justice. When something is done to increase or decrease the advantages of one of these groups some or all of the others may be correspondingly concerned, particularly if it involves pecuniary consideration; for instance, if what is proposed relates to the rate of compensation to the workmen, or anything bearing upon the cost of production.

Employer and employee must both be considered at all times and each should be adequately and fairly rewarded for his contribution in money or work to a given enterprise, as otherwise the incentive for investment or effort would be diminished, if not entirely removed. A nation whose economic resources are not utilized to the best advantage and to the full extent of capability cannot be expected to progress in accordance with its opportunities in the legitimate attempt to hold its position in the onward stride of nations.

If the return on capital invested is not reasonable it will be withdrawn or diminished, or, at least, extensions will not be made; and in that case employment will be reduced. If the workers are not properly treated then capital will suffer either by the retirement of the workmen or indifference to duty. Each is equally dependent upon the other for the full measure of success. The capitalist can, if necessary, to a limited extent, perform the various tasks pertaining to his business and perhaps thus supply the necessities of life; the laborer, without any capital, resulting from work or otherwise, would find it more difficult to supply his necessities. Each one of these groups, for self-protection, must cultivate the friendship and study the interests of the other.

Assuming that the pecuniary conditions of the capitalist and laborer are established on a basis of justice as between themselves, the next consideration is the relationship between these two combined and the consumer. If the latter could be left out of consideration then there need be no difficulty or difference between employer and employee concerning compensation or other advantages, for whatever was added to the profit of



either could be charged to the consumer by increasing the selling prices of the output. I am not discussing relative prices or amounts; that must always be based, more or less, upon existing conditions, such as those relating to supply and demand, as well as the risks involved, the nature of the employment, the results achieved, *et cetera*.

The three groups are intimately connected. Whenever labor receives increases in wages, or other pecuniary advantages, the amount must be charged to and paid by the consumer, provided capital is not receiving more than it is entitled to receive. Consequently the question of selling prices or wages in many cases practically relates only to the laborer and the consumer. In estimating the cost of production from the raw to the finished material it should be borne in mind that 85 or 90 per cent of the total is confined to the sum paid for labor. If capital or labor is receiving a larger return than it ought to have the excess is provided by the consumer in paying improper prices. There should always be maintained a fair and reasonable equilibrium, taking into account all the circumstances.

And in discussing the rights of the consumer it must not be overlooked that the capitalists and the laborers are consumers as well as the general public; and therefore that when the capitalist, the laborer or the general public is seeking any advance in rates or returns which adds to the cost of production or delivery of commodities the one who urges the increase may be proposing to add to selling prices and to the prevailing cost of living. A man may be demanding a supposed benefit to himself when in fact the total net result will be a personal disadvantage.

Also, when we consider that the three groups named are closely connected we cannot overlook the most important fact that the effort of anyone to advance wages or prices with resulting costs of production, may be simply a step in adding to the cost of living and consequently a higher standard of general prices with a relatively lower value of the standard dollar.

If we would have a stable, reasonable standard of values, we must, so far as proper and practicable, arrive at and maintain a correct relation between the different groups already particularly referred to. The Government could perhaps endeavor to



determine and regulate the respective interests and rights of each, but coupled with the thought there are immediately conceived complicated and doubtful questions which would make the suggestion appear impracticable. When proposals of this character have been made there have appeared objections by both employers and employees. This is not the time or place for debate upon that subject.

We come now directly to the treatment of labor, which is the principal topic of this discourse. In the past it is doubtful if the workingman throughout the world received his just deserts. In the long ago he was designated the servant of a master and even the laws were framed for the undue benefit of the latter. This was more noticeable in some countries than in others. Possibly the attitude of the so-called servant was sometimes unreasonable and provoked hostility, but, if so, in the opinion of the considerate person of the present day, this furnished no excuse for retaliatory or unfair treatment on the part of the employer.

Fortunately for all mankind, employers and employees as a rule now entertain a more enlightened view of the relationship between them; and because of the practical demonstrations of this fact there is comparatively little likelihood of disturbances inimical to business progress and composure. Agitators, frequently influenced by motives of cupidity, with selfish and unscrupulous designs, regardless of the public good, will bring about temporary disorder, but I firmly believe that if the employers generally in the treatment of their employees are governed by honorable, intelligent and liberal policies there will be no considerable danger of disregard of law or of interference with the orderly progress of human enterprise. Wise, just, considerate treatment by an individual, or an aggregation of individuals, toward others will result in reciprocity and co-operation. Accomplishment by force in any form must give way to reason and conciliation. This is not idealistic; it is practical common sense. The Golden Rule, more and more, should and will be practiced in everyday economic life.

¶ In considering the relationship between employers and employees the welfare of the latter is of the highest importance, not alone because it is right, though that is reason enough, but



also because it is for the benefit of the employers themselves. These groups are associated for mutual profit.) They succeed or fail together. Each has obligations and responsibilities. They are not and should not be considered partners in the sense of being entitled to the control of the business in question or to participate in the return on the capital invested, except to the extent of contribution by each to such capital, for otherwise one would share in benefits without sharing the hazards of investment. Prospective profits furnish the incentive to embark in enterprise and to risk capital. To the extent this is removed or hampered to a corresponding degree will capital be withheld or diverted and economic activity diminished.

But there are many things the employee is justly entitled to. There is due him fair and reasonable compensation, depending upon all the circumstances surrounding the employment. The times, places, services, and results of operation are important to be considered. Necessarily and properly the question of supply and demand is, and always will be a factor in determining prices of labor, as it is in dealing with commodities. This is elementary and healthy; but there are other things of equal importance. When there is a well grounded doubt in regard to wage rates it should be resolved in favor of the employee.

Of equal consequence are the safety and health, moral, mental and physical, of the employee, and so far as practicable, his family, if he has any. (Safety appliances, the best and most modern, should be installed and maintained in every line of employment which presents dangers to the person. Medical, surgical, and hospital facilities should be adequate. Sanitary arrangements should be as near perfect as business conditions permit. Approved systems for voluntary relief in case of accident, and pensions in case of old age or other disability, should be in force. Habitable working quarters and homes, vegetable and flower gardens, schools, churches, parks, wholesome amusements and exercises, should be provided; and in fact everything practicable in the management of business affairs, from the highest sense of propriety and obligation should be available. In times of great temporary stress the employee or his family ought not to be permitted to suffer for



lack of the necessities of life. It pays big, in dollars and cents, for the employer to maintain working conditions which are beneficial to the health and the disposition of the employee.

While it is not the purpose of this address to discuss the temperance question, I venture to remark in passing, that it is decidedly for the interest of the laboring man, and all others for that matter, whether they work with their brains or hands, or both, to abstain from the use of alcoholic stimulants. They will be more successful in life, financially and otherwise; better citizens, morally and mentally; of higher standing and greater influence; more contented and happier. Temperance means fewer hospitals, almshouses and prisons; less suffering and misery.

The workmen ought in some form to be offered opportunity to invest on favorable terms in the business inaugurated by the employer. This encourages thoughtful attention and endeavor to economize and save. It makes the wage-earner an actual partner in the business of the concern with which he is associated; a real capitalist. Many of the wage-earners have heretofore become property owners, owning the houses in which, with their families, they reside. Some are the holders of interest bearing securities. The number of this character of investors is increasing. They have as keen a desire to see the institutions of this country protected as those who have greater riches, and they may be relied upon to lend their influence and their votes in favor of the protection of property and person. Opportunity must be given to the workmen to increase their pecuniary holdings so far as practicable. To this end I believe the employers will do their part.

Every employee should have the chance to progress from one position to another depending upon his merits. The average workman does not wish to remain in the lower grades of employment or to bring to this level others filling better positions. He desires full and fair opportunity to occupy higher and still higher places, based on efficiency and faithfulness. This he is entitled to and it must be accorded him.

Whenever we find the families of manufacturing workmen living in clean houses, surrounded by beautiful and thrifty gardens, together with the privileges of good schools and satisfac-



tory churches, we may be certain the shops and mills are well managed and maintained in good order. What is here advocated applies more particularly to large manufacturing concerns; but the ideas should extend to every line of employment. A cheerful, contented workman is a consolation and a valuable asset to the employer and to the State. He is essential to continuous prosperity. It is the recognized duty of the employer of to-day, as it is his pleasure, generally speaking at least, to do his part in securing this kind of labor.

We may not expect perfection in economic enterprise and management; perhaps we shall not see universal, uninterrupted tranquillity, even in this highly civilized, progressive and prosperous country; but we shall not witness demoralization, revolution or retrogradation.

Those who claim that large numbers of workmen in this country could be induced to participate in any attempt to override law or order misjudge and underrate them. The great majority are opposed; and of this majority there are in control the young men and the young women; the pride and the security of the nation.

During the recent stupendous military conflict there were in the employ of one large corporation and its subsidiaries about 300,000 wage-earners. The greater part were foreign born; thousands upon thousands of them from central countries of Europe. They were appreciative of the disposition of their employers to treat them justly and in accordance with high standards of business principles. They were efficient, faithful and loyal. The manufacturing works were maintained in continuous operation throughout the War and supplied a large and important part of the material needed for the military necessities of the United States and its associates. These workers subscribed liberally to the Liberty Loans and many of them contributed to the war relief campaigns. Here was a magnificent exhibition of reciprocal sentiment and industrial coöperation. It was a demonstration that labor in this country is intelligent and honest in thought and performance; and that it may be depended upon to actively assist in the maintenance of good government.

The labor question at present is engrossing the attention of



students and will continue to do so with predominant importance after the conferences at Paris are concluded. The workmen have been credited with worthy achievement or charged with lawless and destructive tendencies, perhaps in both respects in unjustified measure. The final attitude of the large majority, certainly in the United States, will be right. Their own welfare will be thus promoted.

But public sentiment, based on facts, developed particularly by the learned, thoughtful, fair-minded, and conscientious men and women who are neither capitalists nor laborers in the sense intended by what has been said, will have, in the future, more influence upon the situation than ever before; and the attitude of the employers towards employees, if it shall be such as I have indicated it ought to be, will be a potent factor for good.

In the front ranks of great and good and successful men and women will be seen the college graduates. Much depends upon them; and they will measure up to their obligations and opportunities.



# WILL H. HAYS

## TEAMWORK

Will H. Hays was born in Sullivan, Ind., in 1879, graduated from Wabash College in 1900. The same year he was admitted to the Indiana Bar and elected Republican committeeman for his precinct. Since then he has been appearing constantly before the public as a speaker with a rapidly widening reputation. As Chairman of the Republican National Committee he organized the successful campaign of 1920 and entered President Harding's cabinet as Postmaster General. After a year's service he resigned to become President of Motion Picture Producers and Distributors of America, Inc.

This address was given by Mr. Hays as Postmaster General before an Annual Convention of the National Association of Letter Carriers.

IN his inaugural address on March 4th President Harding said: "Service is the supreme commitment of life. I would rejoice to proclaim the era of the golden rule and crown it with the autocracy of service."

This is Labor Day. It is not the birthday of a hero nor the founding of a nation; it is not the anniversary of a battle nor the crowning of a king. It is the day when the world by outward manifestation recognizes the worth of man; when man as man feels his power and glories in it. It is the day when from one end of the Republic to the other millions of citizens are paying tribute to that vast army which follows the banner of labor—the most potent factor in building up and making great and strong this nation. It is the day when we teach our children that labor is honorable and only through it can we possibly hope to achieve the beneficent ends for which society is established and government founded. Such is the day we celebrated to-day, such is Labor Day everywhere.



Labor organizations have their origin in the instinct of self-preservation, of mutual advancement, of common good, and are as natural and legitimate as the organization of capital. In fact, the organization of labor and capital naturally go hand in hand. The one is essentially the complement of the other. That labor organizations have done much to advance the cause of labor there is no question. They have been earnest advocates of education, knowing full well that knowledge is power. They have founded benefactions and paid millions of dollars to their members. They have helped to increase wages and secure reasonable hours of service from unworthy employers. They have helped to abolish the conditions in the sweat shops of many of the great cities. They have stood against the abuses of child labor. They have taught the necessity of observation of contracts, knowing that contracts are founded in honor and are the basis of commercial success. They are opposed to anarchy for they know that labor's best interests are dependent upon the maintenance of orderly and stable governments.

The labor of the country constitutes its strength and its wealth; it is the country's one greatest asset. In the war crisis through which we have passed the labor of the country was its salvation. The better that labor is conditioned, the higher its reward and wider its opportunities, and the greater its comforts and refinements, the better will be our civilization, the safer will be our government, the more sacred will be our homes, the more capable our children, and the nobler will be the destiny which awaits us.

It is not given to the wisest to see into the future with absolute clearness. No man can be certain that he has found the entire solution of these infinitely great and intricate problems and yet each of us, if he would do his duty, must strive continually in so far as within him lies to bring about that solution.

We must remember first that we are all one people; that we are all the workmanship of the same divine hand; that with our Creator there are neither kings nor subjects, masters nor servants, other than stewards of his appointment to serve each other according to our different opportunities and abilities.



And we must learn the two lessons, the lesson of self-help and the lesson of giving help to and receiving help from others. There is not a man of us who does not sometimes slip, who does not sometimes need a helping hand, and woe to him who, when the chance comes, fails to stretch out the helping hand. It is as dangerous now as it was just outside the walls of Eden to ask in surprise, "Am I my brother's keeper?" If this is our criterion we can face unflinchingly great industrial problems, vast in their importance and complexity. For myself I am convinced that the true solution of the questions arising between labor and capital lies in an awakened public conscience, in a thorough inculcation of the spirit of fair dealing among men; then in organization, and in wise humane leadership, and in the establishment of boards of conciliation or arbitration which are absolutely free from the polluting touch of selfish interests or political demagogues, to which the interests concerned may freely and confidently appeal. I believe, too, that we must develop a reasonable method for honest and efficient labor to have an opportunity to acquire an interest in the business to which it is expected to give its best efforts. Pending this development, the equilibrium between production and wages must be established and maintained and there must be justice for all—exact justice, the justice of right and of reason, and not of force. Force is the method of the savage—patience and diplomacy of the sage. Let our motto be to build up, not in any sense to tear down, remembering always that law and order are above all things else.

This is no generality, no mere truism. You have laws in your association. Neglect your laws and your association will fail. Obey your laws and your association will stand. Let care be taken in the making of laws and when made see that they are obeyed. Have officers that will enforce them; if they don't, then change your officers. The labor unions of the country will realize that as they value their success, so will they value law and order, knowing that without law and law obeyed there is chaos, calamity and ruin. We are the freest government on the face of the earth, but our strength rests in a patriotism which measures a regard for law and order in reverence. Anarchy flees before that patriotism. Peace and order and



security and liberty are safe so long as that kind of love of country burns in the hearts of the people. Never must it be forgotten that liberty does not mean license. Liberty to make our laws does not give us a license to break them. Liberty is responsibility and responsibility is duty, and that duty is to preserve the exceptional liberty which we enjoy within the law and by the law without any temporization or compromise whatsoever. "Liberty is fire in the hearth; license is fire on the floor."

The fact is of course, my friends, that the brotherhood of man and the Fatherhood of God is the one reality of immeasurable stupendity. The one idea which, (I quote :) "like a golden thread runs through all history, is the brotherhood of man and the Fatherhood of God. It ties all ages together. It relates all peoples. It explains all events. It illuminates all history. The development of successive centuries is but the result of the orderly processes of evolution, the gradual unfolding of this supreme purpose of God."

Living is a serious business, my friends. It is a serious thing to live; yes, a serious, but a glorious thing to live. Whether we believe as Christians, as we do, that there is a future life, or whether we believe with infidels that death ends all, of one thing we are certain—we are here. The great present is about us—the most potent present since time began. Truly, to live, to really be and do in this great day of being and doing, is of tremendous consequence. It's a great battle. A magnificent contest. A glorious struggle. And every right-minded man must needs be filled with the righteous desire to be one in the total of its activities, to be one in the quotient of being—and to be as near the left side of the number as possible.

Yet, my friends, there is danger in this roaring, toiling, stormy fray, of becoming so imbued with the spirit of conquest, so animated with the zeal of success, or even impelled by the smartings of defeat, so full of the strife itself, that the beauties of life are lost sight of, the tender emotions smothered, and we are prone to forget that the "other man" is our brother; that he is born of a mother as we are; that he is possessed of the same feelings as we are; that his strivings, his endeavorings, are as worthy as our own and entitled



to the same consideration. Then, my friends, it does us well to pause and ask ourselves:

We live in deeds, not years; in thoughts, not breaths;  
In feelings, not in figures on a dial.  
We should count time by heart-throbs.  
He most lives  
Who thinks most, feels noblest, acts the best.

Platitudes, these, one may say. Platitudes, perhaps, but the one and only successful practical working philosophy of life. Personally, I would rather love my friends and be loved by them than to have all the wealth in the world.

Friendship like a noble river,  
Rolls its peaceful waters by;  
Tempest tossed and troubled never,  
Gliding to eternity.

It gives me great pleasure to attend the annual convention of the National Association of Letter Carriers. There is no division in all the great postal service of more importance than the letter carriers. It is the letter carrier who finally delivers the goods. The carriers are the points of contact most intimate with the public. It is the carrier that will not only deliver the mail in the courteous, efficient and proper manner which the public requires—the carrier can do more than any other agency in educating the public to aid the service. I would hope that the carriers make this their business, just as certainly as the delivery of the mail, in order that early mailing may be encouraged, that the mail may be properly prepared and addressed, and that all the instructions to facilitate the service which the department would have reach the public might be carried to the public by the carriers themselves.

You know, the postal service is generally taken for granted like the sequence of the seasons. Men forget that it is a fact that the United States Postal Service is the biggest distinct business in the world; that we have 300,000 employees immediately connected with the operation, with 100,000,000 customers. The annual turnover of the business in the Postoffice Department



amounts to nearly three billion dollars, with an expenditure of six hundred millions annually. We have the largest express company in the world, handling over two billion packages last year. We have the largest savings bank in the world in number of depositors, with 75 per cent of the depositors of foreign extraction. There is twice as much postal business done in New York City alone as in the entire Dominion of Canada. The business of the New York office has increased 289 per cent since 1912—with no increase in postal facilities since that date. A million seven hundred thousand letters are handled every hour by the Postoffice Department. Every time you buy a postage stamp you are a part of a total of fourteen billions annually. There are 1,125,000,000 postal cards sold each year and 9,000,000 stamped envelopes; debts to the amount of \$1,500,000,000 are satisfied each year through the sale of 150,000,000 money orders. The earth could be encircled ten times with the two rails on which the mail is carried in the United States. We use 400,000 quarts of ink in a year and 25,000 quarts of mucilage, and enough lead pencils to place one behind the ear of 1,500,000 persons. We use 800,000 miles of twine every year, enough to girdle the earth thirty times. There are 19 million undeliverable letters handled annually by the Division of Dead Letters owing to the neglect of the public in addressing mail. In New York City alone there are over 250,000 letters readdressed daily by clerks from city directories. Just imagine the tremendous cost this is to the taxpayers, due to carelessness of mailers. Seventy-five per cent of all mail posted is dumped into the postoffice at the end of each day, straining the human postal machine almost to the breaking point. An accumulation of unsettled claims for indemnity on lost and damaged parcels has been reduced from 175,000 in March to a condition that will be current in thirty days more. Fundamental changes are being made daily in the operation of the service.

When we took hold of the administration of the postoffice it seemed to me that the field in which the greatest progress could be made in the shortest time was in the welfare of the men and women engaged in the work. I have felt very strongly and have tried to express the hope that all employees will feel that they are to work with me, not for me, in this service



to the public. I have promised and promise you now that in return your labor shall be regarded in common with my own, not as a commodity but as the result of the striving of living human beings. I would reiterate that the idea that labor is a commodity was abandoned 1921 years ago last Easter. This does not imply, of course, that we are to be lax or slothful; the very opposite is true. It means that we are expected to perform our duties faithfully just as the President performs his.

I am determined in all seriousness to go to great lengths to develop in the department the spirit that we are 300,000 partners, for such is the fact. The working conditions in many places are unsatisfactory and a large amount of improvement must be made in that direction. There is no doubt about the quality of the postal employees—there is no better set of men and women in the world. They have the brain and they have the hand to do this job well, and once again their full heart has come into the service.

We are trying to develop, as you know, a Welfare Department, just as definite in its duties and certain in its functioning as the Fiscal Department or any other department. The whole matter of this welfare effort is tremendous. It must be, however, of your and not my development. Paternalism is as obnoxious to me as it is to you. The really successful welfare movements are those developed in the business itself among those who are most intimately concerned. I would build a welfare organization solely for the purpose of supplementing and encouraging the program of the employees.

Every other large industry in the country has adopted welfare measures. This humanizing business is not original. It has been the definite trend of American business for the past generation. Just how far we can go with it in the Postoffice Department I do not know, but it is certain that very much can be done, and not in any sense in lieu of wages. All the things that are done successfully for the welfare of the employees in other successful business must be done as far as possible in this, the greatest of all business. Why it has not been seriously attempted before in the Postoffice Department I don't know. Uncle Sam must be just as good a boss as any private employer. It is certainly one of the very definite purposes



of the days just ahead. If we can improve the spirit and actual conditions of the 300,000 men and women who do this job, that in itself is an accomplishment, and it is just as certain to bring a consequential improvement in the service as tomorrow's sun. I have said, and I reiterate in the dignity and responsibility of this presence, that it is my opinion that the postal establishment is most certainly not an institution for profit nor for politics, but an institution for service, and it is the President's most earnest purpose to improve that service. You can't expect men and women to give service if they are to be the shuttlecocks of politics. It would be my very greatest satisfaction if in this effort I contribute a little to the end that the postal service be made more and more a desirable career into which the young can enter with a certainty that their service will be performed under reasonable conditions for a reasonable wage and for an appreciative people. The men and women who constitute the great army of employees are doing a distinct government and public service and they are entitled to an appreciation commensurate with the efficacy and importance of that service. The first element of a proper appreciation is to make certain that honest and efficient service shall be honestly recognized and that the merit system shall control without any subterfuge under any circumstances whatsoever. I have said, and I repeat, that my purposes are: First, to make such rectifications as in all decency and fairness must be made to assure a square deal; second, to strengthen and broaden the Civil Service at every point wherever possible to the end that merit may govern; third, with absolute fidelity to put the entire service upon a purely business basis so sound and so serviceable that no political party will ever again dare attempt to ignore or evade it ultimately.

That honest and efficient labor should have a voice in those phases of the management of business which concern working conditions and a living wage commensurate with the value of the service is but common justice. The practical application of this general idea to the postoffice is a problem which cannot be worked out except with the coöperation of the postmaster—possibly with local councils in the larger postoffices composed of representatives of employees selected by them,



and the postmaster or his representative. The idea might well be developed in order that employees may have an opportunity to express their opinion in open council as to the improvement of working conditions and, if possible, settle these questions locally. We have thought that it might be well to organize a national council composed of representatives of the employees, selected by them, who will meet in Washington periodically to discuss with the welfare head matters of importance when it is a question of national character.

And now, my friends, for us in the postal service here is the problem and here is the solution. It is the fundamental principle of democracy that we shall help one another, that all citizens shall coöperate in the work of government. And the work of government is not merely electing men to Congress to make laws and electing a President to execute them. It is just as truly government work to collect the mails, to transmit them to their destination, and to redistribute them and deliver them, and it is fitting for every citizen of our country to regard himself as practically interested in that work.

Teamwork all around, my friends, is the magician's wand that alone can make our governmental services what they should be and what they can be and what they will be if only that means is applied. You may regard me, if you will, as the wheel horse of the team, to do the hardest work, that's what I'm in this office for. And remember that it is a partnership proposition, all recognizing that we are engaged in the same transcendent problem with each other and with the public, the solution of which is to be found in the best postoffice service and the best government in all the world.

To you all, as fellow citizens of our common country I plead for a patriotism in peace as well as in war. I insist that we have not merely that patriotism born of extremities, which burns in the souls of men only when their country is in danger, not the patriotism which is stirred only by martial music—but a patriotism which moves men to make their country's welfare their own business and every day to realize what we owe to the country in which we live, and which moves us to discharge that debt by aiding in every way we can to make and keep conditions right in this country.



The task ahead will measure the brain and heart of America. The guidance is in good hands. From the time of the nomination until now, I have discussed matters with President Harding in as serious a manner as men can talk, and of as important subject matters as can be discussed. President Harding possesses just those vital qualities of mind and heart necessary to-day and in the time ahead. His poise of mind, his soundness of judgment, his hold on fundamentals, his appreciation of the needs of to-day and of to-morrow, his love of the people from whom he came and of whom he is one, and his faith in them; his magnificent grasp of large affairs, his great native ability and his training in statesmanship, his regard for the opinion of others, his experience and success in the handling of men, his proper appreciation of his country's position as a responsible factor in the world's future, but with the fullest realization of the absolute importance of our own supreme nationalism, his sterling Americanism, his righteous character and manhood, and withal his thorough humanness, all qualify him in the most exceptional degree for his tremendous responsibilities. The country will love him, trust him and follow him, just as all who know him love and trust him; and the world will honor him.

He is in no sense a partisan President, he is the President of us all—with enough Democrats voting for him to give them a fifty per cent equity in him—and we may look with the most complete confidence to his performance. He means very, very much, indeed to the country's welfare.

It is a great country. I have been about a good deal of late. You have been up and down your stairway at home a hundred thousand times, but you can't tell the number of its steps. You can send a man there once to count the steps, and he is a better witness as to the number of steps than you are. I have been out in the late months all over, and I have counted the steps. The manhood and womanhood of America is sound. A little while before election I got off a train at Bangor, Maine, and the porter, handling a pretty large bag which I carry, said "How'd do, Mr. Hays." I was pleased, and I looked at him in surprise. He said, "Yes, I know you. I put this grip off the train the other day at Albuquerque, New Mexico." I



have counted the steps, and the manhood and womanhood of America is sound. Everywhere, everywhere is the spirit of America; everywhere, everywhere, it is the manhood and womanhood of this republic. Often, in various places we would take walks on Sunday, when people are really more nearly as they are, and just see folks everywhere, and everywhere the churches, everywhere the schoolhouses, everywhere the fathers and mothers walking to worship, with the children running ahead with their little starched dresses and little pink ribbons, everywhere the same look ahead, everywhere the evidence of hope and the same aspirations, practicing the faith of the fathers—all reaching upward, upward all of them, upward to the same God. All good, all ahead, all up, and up, and up. I tell you the manhood and womanhood of America is sound. It is a great, great country. And it is all ahead of us.

The stress of late days has strained all overmuch. A little patience may be well, and well may each look to his own industry and thrift, well may each look to his own conscience and his own moral responsibility. Let us remember that one man is only better than another when he behaves himself better. We all go up or all go down together. Let us give every well behaved man and woman in this country their equality of opportunity, and then let us require from them their full measure of accountability. Live and let live is not enough—we must live and help live in America. It will be all right. No exigency, however, serious, will present to this nation an unsurmountable crisis. Every problem is solvable. Readjustment demands the best there is in us as a nation mentally and spiritually. We shall adhere to the true, clean thing, and never abandon our high ideals. This nation is a success; it is still the hope of the world; it must be made a yet greater blessing to the sons of men.

I am reminded of a poem in the *Saturday Evening Post* a little while ago, in dialect—which I cannot imitate—but which was called "Perspective," and it went like this:

You look 'way down 'long de railroad track  
And you scratch yer crown; and your brain yer rack.  
"By gum," y' say, "How de train don' gwine  
To make its way where de two rails jine?"



On flies de train—for it don't appear,  
To bodder de brain ob de engineer.  
And y' sure to find wid de nearer sight  
Dat de rails ain't jined and de track's all right.

Jes' so we all, in de future far,  
See de path get small. How we gwine past dar?  
But we 'proach de place and it wider seem  
And we find dere's space for a ten-mule team.



# PAUL HENDERSON

## AIRCRAFT FOR INDUSTRY

The following address by Mr. Paul Henderson, general manager of the National Air Transport, Inc., was delivered at the thirteenth annual convention of the National Association of Manufacturers of the United States, at St. Louis, October, 1925. It deals with an infant industry and offers a new program. No one can now imagine the feelings with which the reader of 1950 may review this address. Mr. Henderson was born in Lyndon, Kansas, in 1884, and was appointed Second Assistant Post Master General, in charge of postal transportation, in 1922.

**MR. PRESIDENT AND GENTLEMEN:** I consider it a real privilege to talk for a few minutes on the subject of aviation to a representative group of American business men, for the very simple reason that aviation, unless I am a poor reader of the signs of the times, is about due for its long-looked-for and often heralded arrival as an agent of commercial transportation.

It is a privilege to explain in a little detail some of the outstanding facts relative to this new type of transportation, and that privilege becomes a particularly inviting one when it makes possible the presenting of these facts to a group of men such as is here assembled to-day.

There is probably no subject upon which there is as much misinformation as there is on the subject of aviation. To my mind, there is no subject more interesting. This last may seem like an exaggeration, but I think it is a statement capable of proof.

The airplane was born in America. The first heavier-than-air flight in the world took place in the United States and was conceived and developed in the minds of two American brothers.



You all know the history of the Wright Brothers' early struggles and ultimate success. You all know that they had to go to Europe to get the real financial backing which was necessary to round out their work. They taught Europe to fly.

#### WAR'S IMPETUS TO AVIATION

When the war came on, European countries saw in the airplane a potential weapon of great possibility. Intensive development of aircraft took place during the hysterical years of the war. We in America did our share of this development. I think perhaps we did a little better job than anybody else in the matter of technical development and production of aircraft.

There has been much scolding of the Government for its war-time aeronautical activities. I think that instead of being scolded, the Government should be congratulated upon the success which it made. Starting out with nothing, in less than two years, we manufactured literally tens of thousands of airplanes, airplane engines, airplane instruments, etc., etc. It is true that practically none of this equipment ever reached the zone of war. At any rate, the war finished with aviation advanced more than it might have been expected to advance in fifty years of ordinary peace-time development.

The necessity and press of the war brought forth, not only here, but all over the world, a tremendous technical step forward in aviation. As far as the United States is concerned, there it ended. Nothing much has happened in this country worthy of presenting, since the war, in aviation circles. The Army and the Navy have been busy wearing out the airplanes which were on hand when the war was finished. Now they have them about worn out.

The Post Office Department, using certain of these same war-time airplanes, really developed a remarkable transcontinental service between New York and San Francisco. It reached its ultimate in the shape of development with the first of last July, when the service undertook, in addition to the transcontinental operation, an overnight operation between New York and Chicago. Air mail now leaves New York for San



Francisco every morning of the week, arriving in San Francisco late the following afternoon. Air mail now leaves San Francisco early each morning for New York, arriving in New York the afternoon of the following day. Air mail now leaves New York at nine-thirty at night for Chicago, arriving there at five o'clock in the morning, with a corresponding eastbound schedule from Chicago to New York.

### EUROPE SUBSIDIZING AVIATION

I shall always consider it a privilege to have been identified with this air mail development, just as I now consider it a privilege to be charged with the management of the first sizeable commercial effort in this country to put aircraft to practical every-day use.

In Europe, the commercial use of airplanes in the carrying, not only of mail and express, but also of passengers, has developed rather effectively and definitely since the war closed, until now we find Europe crossed and criss-crossed with operating air lines carrying passengers and goods. This looks fine, and is fine, until we learn that all of this is made possible only by tremendous governmental subsidy. There isn't an air line operating in Europe which could succeed for six weeks without subsidy. Why has Europe been so keen for these subsidized lines? The answer is obvious. Europe sits in constant fear of war. European military men know that the airplane will be the controlling factor in the next war. Through these subsidized commercial lines, Europe is keeping itself supplied with aircraft, trained pilots, and air organizations, ready at a moment's notice to be put into uniform and put to work as either offensive or defensive agencies of war. Whatever Europe may pay as subsidy to commercial air lines is simply being paid as insurance against the possibility of war.

The importance of aircraft and a possible future war is very definite to us here in America. You have read much in the newspapers lately of criticism of the existing Army and Navy air service. I am sorry to say that a great deal of what you have read and of what the investigating committees have



been told is true. America is sadly lacking in proper aeronautical preparation from a national defense point of view. If our potential enemies were as near to us as European countries are to each other, this would be a most serious condition, but thanks to a kind Providence, we are separated by many miles of ocean from any sizeable country that might think of engaging with us in war. This distance is our safeguard, but even the distance between Continental Europe and America is fast shrinking. It is not improbable that, in the next few months, aircraft will be built which could, if necessary, cross the Atlantic and still have enough cruising radius left to bomb our eastern seaboard.

### COMMERCIAL USE OF AEROPLANES

So we, as a nation, must not close our eyes to the war-like possibilities of aviation. Rather, it seems to me, we must open our eyes to the commercial possibilities of this new vehicle, in an effort to get as many air craft at work in everyday commerce as is possible in the United States. First of all, our interest in this attempt should be prompted by the fact that aircraft offers to business men and industrial operators the most rapid transportation ever devised. Certainly, this rapid transportation for mail and merchandise will have its value in the industrial world and will fit into the general transportation scheme of things in the United States with profit to those who use it. Second, our interest should be prompted by the fact that this development of a commercial use of aircraft will automatically assist us in a proper preparation for defense in the air.

A few days ago, I was asked to appear as a witness before the President's Aircraft Investigating Committee in Washington. Among other things, my testimony before that Committee included a statement as follows:

In a few months more than ten years, I find myself converted from a skeptic to an enthusiast, on the subject of aviation for the purposes of commerce. I am confident that the National Air Transport, Inc., will succeed.

Commercial aviation in America is not looking for, nor ex-



take over and maintain these airways, and lay out, equip and maintain new airways, I mean by an airway, those aids of navigation which will have to exist between the terminal fields. I mean the emergency fields which should be located at intervals of approximately twenty-five miles, but I do not mean the terminal field. I believe that terminal fields should be, and will be, provided by the municipalities. Excellent precedents for this approach to that problem will be found in the action of Cleveland, Boston, St. Louis, St. Joseph, Mo.; Chicago and many other cities. The preparation on the ground between these municipalities should be provided by the Federal Government.

At the moment, air navigation at night is only possible by the aid of powerful beacon lights, routing lights, etc. As the art develops, it is entirely probable that the value which we now place on these lights will be minimized and that directional radio and other electrical means of navigation will come to the front. In connection with its airway work, the Government should continue to experiment in the matter of lights, directional radio and other aids to navigation.

In the matter of regulation, because of the newness of this art, and because of the technical make-up of aircraft, great care will have to be exercised in the matter of inspection of not only all aircrafts, but of pilots. Common sense rules will have to prevail if this regulation is not to be hampering in its character; regulation of a liberal nature, necessary to eliminate the flying of unsafe machines, is called for. (This one thing is responsible for more of the accidents in the air than any other one contributing factor.)

Unless Congress enacts some such law as that suggested in the foregoing, development of commercial aeronautics will be hampered. Inter-state operation of aircraft now is, from a legal point of view, an unknown thing. We need this law to establish us legally. We need it to establish safe, regular operation.

Steamships with improper power plants, or commanded by inexperienced officers, are not permitted to travel the seas. Aircraft not airworthy or aircraft not in the hands of a competent operative should not be permitted to travel anywhere.



pecting a subsidy. In that respect, it may be contrasted with the European efforts. There, all air lines exist financially by virtue of subsidy.

Commercial aviation in America does, however, need Federal sympathy and understanding, and active Government co-operation. The Government, on the other hand, needs commercial aviation, needs it as a background for its national defense. As commercial use of aircraft develops, so will the problems of national defense diminish from an aeronautical point of view. The country will become air-wise. Commercial organizations and equipment will produce a physical reserve. Aircraft factories will have profitable peace-time employment. We, as a nation, will become a going concern in the air.

The Federal Government has recognized its obligations to all types of transportation. The railroads, the highways, as well as the seas, have all been beneficiaries of Government interest, Government regulation, and, in many cases, Government aid. The Government's responsibility to commercial aviation is, in my opinion, a very definite one, and it is three-fold.

I believe, first, that the Government should take over existing inter-state airways, and lay out and equip new airways, and maintain them for the benefit of all who wish to properly navigate over them.

#### FOR GOVERNMENT REGULATION

Second, I believe that the Government should regulate inter-state air traffic; to this extent, I believe that the Government should prohibit the flying of any aircraft by an unqualified pilot. This will mean Government inspection of aircraft and their power plants, and Government licensing of pilots.

Third, I believe that the Government should contract for all carriage of its mail in the air, where such carriage in the air is of economic value.

Each of these three subjects may need a little enlargement. When I say that it is my opinion that the Government should



## DALLAS-CHICAGO ROUTE

I am optimistic as to the action which Congress will take in the matter of aeronautics this winter. In fact, I am so optimistic that I am arranging now for the National Air Transport to start operating within a few weeks, between Dallas, Texas and Chicago. We expect to leave Dallas just after breakfast in the morning and arrive in Chicago about seven-thirty in the evening. We expect this route to bring us some business, but we do not expect it to become an outstanding success until we are able to connect it up with New York. Our ultimate plan is to leave Dallas, Texas, in the morning about eight o'clock and arrive in New York the following morning about five o'clock, in a continuous movement.

Experience has taught us that, from a technical and practical point of view, this is an entirely feasible thing to do. I cannot but believe that such a route as this, operating regularly, will attract mail and package traffic of the American business man to a point where we may, with some enthusiasm, look forward to its financial success. If this route can succeed, others can succeed. If this route and others may be established, and may succeed, then it is not too much to expect that we will soon have a rather nation-wide operation of commercial air lines, going along with some profit to their owners in every-day commerce.

Look five years ahead and assume that this has happened. You will then have not only the aircraft and the pilots and the trained men engaged in these day-to-day operations. You will have the airplane factories in which the flying machines for these routes are being built and overhauled and maintained. You will have the engine factories turning out the engines. You will have a going aircraft industry, and a going commercial use of aircraft. Once going, and once over the top, as far as traffic is concerned, this sort of thing should be developed to rock along indefinitely, getting better as the art develops; and as it gets better, attracting more and more traffic, up to a point which I do not believe is more than three or four years in the future, when we will be justified in inviting passenger traffic.



I might say just there, that since I wrote this, an experiment my people have been running over a route one hundred and seventy-five miles long has given us one hundred per cent of control of an airplane from the ground by radio, that is, we have been able to set up a radio path of no width at all at its origin and one hundred and seventy-five miles from its point of origin so arranged that the pilot knows when he has left this. When he has left it, he gets two clicks in the telephone receiver, when he is to the left he gets three clicks, when he is to the right he gets four clicks, so, already, the lights which a year ago we thought were essential for night travel, are beginning to take a back place for radio.

I might also say that although my company is not at the present planning to engage in passenger carrying, our reason for not carrying passengers is not that we do not believe we can do it with safety to the passengers, but we believe we can get more dollars per pound by carrying mail and express.

Once we have reached this point, no matter what the state of preparedness of our country may be, from a purely military and naval point of view in the air, it is my contention that this commercial background will place us in a very safe position, as far as air defense is concerned.

My company was organized, as are almost all corporations, with the hope of making money, but it was organized also with the hope of being able to serve the United States along some such line as the one I have attempted to outline to you. Your sympathetic interest as business men will help us. I believe that we are entitled to your interest and your coöperation as we go along.

The National Air Transport, Inc., is a rather unique corporation. None of its stock ever has or ever will be offered for sale to the public. Its incorporators realize that aeronautics is a very definite gamble, and they are sportsmen enough to be willing to gamble with their own money.



## A. BARTON HEPBURN

### BUSINESS EDUCATION

Speech delivered at a dinner to President Hibben of Princeton at the Lotos Club, New York.

I HAD a momentary heart failure as I glanced at some of the other bankers here when President Hibben announced that this Club was the clearing house for ideas, and wondered whether their coming in destroyed your credit. Away back in '65 Chester Lord and myself were fellow students up in a country seminary struggling with the incipient stages of Latin and Greek. After many years and encountering many vicissitudes when I came to New York I found Chester's calling and election assured, enthroned as he was as treasurer of the Lotos Club. Through our boyhood friendship I managed to get through the portals of the Club and attended some of their dinners to great men. The dinners were something to be enjoyed and remembered, and the speeches were all brilliant, the speakers generally roasting each other with keen debate without getting into trouble.

I used to pass by the Club and glance up to the building with all reverence and the strongest hope that I might some day be a member of the Club which assumed the social responsibility of the whole town by extending hospitality to the distinguished men of this land and in fact of all lands. And surely New Yorkers owe a debt of gratitude to the Lotos Club for the hospitalities that they do extend to distinguished men. I still pass by the Club with awe and reverence, but on the other side of the street, having learned by dear experience that the inexorable accounting which nature demands is in no one thing more in evidence than in a systematic diet.



Now, gentlemen, I like a man who knows when he has got a good thing and sticks to it. I like a Club that knows when it has got a good thing and sticks to him. Our friend the president has demonstrated anew that the outside of a horse is the best thing for the inside of a man, and that a ride in the crisp morning air will support one throughout the day and the evening thereof, and that the pace that kills seizes only upon those who surrender discretion and judgment in the mad scramble in which we live.

I am proud to join to-night in paying honor to the President of Princeton University and the great University of which he is President. We in New York feel very near to Princeton, not only topographically but in the better sense of the word. There are so many of her alumni here. President Hibben's ability as a thinker has preceded him, and his scholarly and literary attainments are all amply proven in his past experience, and if his digestion will hold out and meet the demands that are being and will hereafter be made upon it, he undoubtedly will achieve that great measure of success for which we all pray.

Everything in this country, whether it be commercial or literary, begins with a lunch and ends with a dinner. Those who approve of athletics or physical culture in connection with higher education fully remember that a sound mind is valuable only when domiciled in a strong and robust body. I never fully appreciated the meaning of that expression "carving his own fortune," until recently. Eating his way to success, I think would perhaps be the better way to put it.

The most gratifying fact in the evolutionary period in which we live is the fact that public sentiment is more and more inclined to go to our leading educators for direction. Expert knowledge is coming to be more and more recognized and followed. In 1896, when the Republican party dared finally to put the word "gold" in their national platform, and all the silver Republicans withdrew from the convention, Republican editors and writers were dazed. The campaigners were amazed at the position of the party on the standard values, and were unable to answer the arguments put forth by the Democrats or reply to the demand for reasons for turning away from silver at the old ratio, and the managers of the Republican party said, "We



must supply those arguments and those answers," and they turned to the professors.

We here in New York in the Chamber of Commerce are making a determined effort in behalf of commercial education. The courses of study in our public schools seem to have been constructed with the idea of children going to college. Whereas at least ninety per cent leave school at the age of fourteen years or under, and comparatively few go to college. During the last twenty-five years the curricula in colleges have not been materially changed; they have scientific courses, commercial courses and elective courses, which have been lately introduced, and certainly the same principle should be observed in framing the course of study in the public schools. By commercial study we mean the acquisition of modern languages, French, Spanish and German. Commerce in this country is struggling under three awful handicaps. For 119 years the importation of vessels built abroad for commercial use has been prohibited in this country. That is the element of protection. In 1792 when the law was passed denying American register to foreign-built vessels over eighty-eight per cent of the freighting business was done in American vessels. In 1910 less than nine per cent was done. If there is any reason for the continuance of that law I have been unable to discover it.

It costs forty per cent more to build in this country than abroad, and hence an American line of steamers must be capitalized for forty per cent more than when it is built abroad. The great commercial banking power in this country represented by our national bank system, under the banking laws under which they must do business in this country, can have no branches and no agencies at home or abroad. It is impossible that they can compete with the great banks of the world that have agents all over the world in the transaction of foreign business. And that means that our foreign business must be financed by foreign bankers, our rivals, who fix the rate of interest as the foreign vessels fix the rate for freight.

Again, business done in any other country must be done in the language of that country, and in many things according to the customs and uses of the country. In America we speak but one language and are said to speak that badly. And when we



do business abroad we must employ interpreters, and pay our rivals to make our trades for us and do business for us. Now, we hope in the Chamber of Commerce to help overcome this handicap by creating an opportunity first for obtaining a commercial education including these languages, and then by issuing certificates of proficiency as the result of examinations, which will possess a value in obtaining positions at home and abroad.

There are great problems of education to be met and solved, as well as problems of government. There is certainly no position more honorable, and under the circumstances I believe there is no position more responsible and more desirable for good, than the presidency of a great university.



# OLIVER WENDELL HOLMES, JR.

## LAW AND THE COURT

Mr. Justice Holmes of the United States Supreme Court was born in Boston in 1841 and graduated from Harvard College in 1861. He served throughout the Civil War, being three times wounded and promoted from Lieutenant to Lieutenant-Colonel. When he was mustered out he entered the Harvard Law School and was admitted to the Massachusetts bar in 1867. He was appointed Associate Justice of the Supreme Court of the United States in 1902. The following speech was made at a dinner of the Harvard Law School Association.

MR. CHAIRMAN AND GENTLEMEN:—Vanity is the most philosophical of those feelings that we are taught to despise. For vanity recognizes that if a man is in a minority of one we lock him up, and therefore longs for an assurance from others that one's work has not been in vain. If a man's ambition is the thirst for a power that comes not from office but from within, he never can be sure that any happiness is not a fool's paradise—he never can be sure that he sits on that other bench reserved for the masters of those who know. Then too, at least until one draws near to seventy, one is less likely to hear the trumpets than the rolling fire of the front. I have passed that age, but I still am on the firing line, and it is only in rare moments like this that there comes a pause and for half an hour one feels a trembling hope. They are the rewards of a lifetime's work.

But let me turn to more palpable realities—to that other visible Court to which for ten now accomplished years it has been my opportunity to belong. We are very quiet there, but

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OLIVER WENDELL HOLMES, JR







it is the quiet of a storm center, as we all know. Science has taught the world skepticism and has made it legitimate to put everything to the test of proof. Many beautiful and noble reverences are impaired, but in these days no one can complain if any institution, system, or belief is called on to justify its continuance in life. Of course we are not excepted and have not escaped. Doubts are expressed that go to our very being. Not only are we told that when Marshall pronounced an Act of Congress unconstitutional he usurped a power that the Constitution did not give, but we are told that we are the representatives of a class—a tool of the money power. I get letters, not always anonymous, intimating that we are corrupt. Well, gentlemen, I admit that it makes my heart ache. It is very painful, when one spends all the energies of one's soul in trying to do good work, with no thought but that of solving a problem according to the rules by which one is bound, to know that many see sinister motives and would be glad of evidence that one was consciously bad. But we must take such things philosophically and try to see what we can learn from hatred and distrust and whether behind them there may not be some germ of inarticulate truth.

The attacks upon the Court are merely an expression of the unrest that seems to wonder vaguely whether law and order pay. When the ignorant are taught to doubt they do not know what they safely may believe. And it seems to me that at this time we need education in the obvious more than investigation of the obscure. I do not see so much immediate use in committees on the high cost of living and inquiries how far it is due to the increased production of gold, how far to the narrowing of cattle ranges and the growth of population, how far to the bugaboo, as I do in bringing home to people a few social and economic truths. Most men think dramatically, not quantitatively, a fact that the rich would be wise to remember more than they do. We are apt to contrast the palace with the hovel, the dinner at Sherry's with the workingman's pail, and never ask how much or realize how little is withdrawn to make the prizes of success (subordinate prizes—since the only prize much cared for by the powerful is power. The prize of the general is not a bigger tent, but command.) We are apt



to think of ownership as a terminus, not as a gateway, and not to realize that, except the tax levied for personal consumption, large ownership means investment, and investment means the direction of labor towards the production of the greatest returns—returns that so far as they are great show by that very fact that they are consumed by the many, not alone by the few. If I may ride a hobby for an instant, I should say we need to think things instead of words—to drop ownership, money, etc., and to think of the stream of products; of wheat and cloth and railway travel. When we do, it is obvious that the many consume them; that they now as truly have substantially all there is, as if the title were in the United States; that the great body of property is socially administered now, and that the function of private ownership is to divine in advance the equilibrium of social desires—which socialism equally would have to divine, but which, under the illusion of self-seeking, is more poignantly and shrewdly foreseen.

I should like to see it brought home to the public that the question of fair prices is due to the fact that none of us can have as much as we want of all the things we want; that as less will be produced than the public wants, the question is how much of each product it will have and how much go without; that thus the final competition is between the objects of desire, and therefore between the producers of those objects; that when we oppose labor and capital, labor means the group that is selling its product and capital all the other groups that are buying it. The hated capitalist is simply the mediator, the prophet, the adjuster according to his divination of the future desire. If you could get that believed, the body of the people would have no doubt as to the worth of the law.

That is my outside thought on the present discontents. As to the truth embodied in them, in part it cannot be helped. It cannot be helped, it is as it should be, that the law is behind the times. I told a labor leader once that what they asked was favor, and if a decision was against them they called it wicked. The same might be said of their opponents. It means that the law is growing. As law embodies beliefs that have triumphed in the battle of ideas and then have translated themselves into action, while there still is doubt, while opposite



convictions still keep a battle front against each other, the time for law has not come; the notion destined to prevail is not yet entitled to the field. It is a misfortune if a judge reads his conscious or unconscious sympathy with one side or the other prematurely into the law, and forgets that what seem to him to be first principles are believed by half his fellow men to be wrong. I think that we have suffered from this misfortune, in State courts at least, and that this is another and very important truth to be extracted from the popular discontent.

When twenty years ago a vague terror went over the earth and the word socialism began to be heard, I thought and still think that fear was translated into doctrines that had no proper place in the Constitution or the common law. Judges are apt to be naïve, simple-minded men, and they need something of Mephistopheles. We too need education in the obvious—to learn to transcend our own convictions and to leave room for much that we hold dear to be done away with short of revolution by the orderly change of law.

I have no belief in panaceas and almost none in sudden ruin. I believe with Montesquieu that if the chance of a battle—I may add, the passage of a law—has ruined a state, there was a general cause at work that made the state ready to perish by a single battle or a law. Hence I am not much interested one way or the other in the nostrums now so strenuously urged. I do not think the United States would come to an end if we lost our power to declare an Act of Congress void. I do not think the Union would be imperiled if we could not make that declaration as to the laws of the several States. For one in my place sees how often a local policy prevails with those who are not trained to national views and how often action is taken that embodies what the Commerce Clause was meant to end. But I am not aware that there is any serious desire to limit the Court's power in this regard. For most of the things that properly can be called evils in the present state of the law I think the main remedy, as for the evils of public opinion, is for us to grow more civilized.

If I am right it will be a slow business for our people to reach rational views, assuming that we are allowed to work peaceably to that end. But as I grow older I grow calm. If I



feel what are perhaps an old man's apprehensions, that competition from new races will cut deeper than workingmen's disputes and will test whether we can hang together and can fight; if I fear that we are running through the world's resources at a pace that we cannot keep, I do not lose my hopes. I do not pin my dreams for the future to my country or even to my race. I think it probable that civilization somehow will last as long as I care to look ahead—perhaps with smaller numbers, but perhaps also bred to greatness and splendor by science. I think it not improbable that man, like the grub that prepares a chamber for the winged thing it never has seen but is to be—that man may have cosmic destinies that he does not understand. And so beyond the vision of battling races and an impoverished earth I catch a dreaming glimpse of peace.

The other day my dream was pictured to my mind. It was evening. I was walking homeward on Pennsylvania Avenue near the Treasury, and as I looked beyond Sherman's Statue to the west the sky was aflame with scarlet and crimson from the setting sun. But, like the note of downfall in Wagner's opera, below the sky line there came from little globes the pallid discord of the electric lights. And I thought to myself the *Götterdämmerung* will end, and from those globes clustered like evil eggs will come the new masters of the sky. It is like the time in which we live. But then I remembered the faith that I partly have expressed, faith in a universe not measured by our fears, a universe that has thought and more than thought inside of it, and as I gazed, after the sunset and above the electric lights there shone the stars.









HERBERT C. HOOVER



# HERBERT CLARK HOOVER

## WASTE—A PROBLEM OF DISTRIBUTION

Owing to the widespread misunderstanding of what takes place in distribution and the necessity for detailed studies of their problems by distributors themselves, the Board of Directors of the Chamber of Commerce of the United States authorized the calling of a National Distribution Conference. This took place in Washington on January 14 and 15, 1925, and Mr. Hoover's address was delivered at the opening session.

THE outstanding problem of our distribution system can be easily summarized in one question.

Can we reduce the margin between our farmer and manufacturing producers on one side, and our consumers on the other?

The area of undue profits in the margin has been pretty well eliminated in the past two years. During the period of inflation and deflation there were both undue profits and undue losses, both equally a burden upon the producer and consumer. But with the gradual stabilization in prices the processes of competition have attended to this job.

The Department of Commerce has, during the last four years, engaged in continuous and exhaustive study of our whole distribution system. We have demonstrated in several score of different directions the practicability and success of a definite program. We have, during this time, held over 200 conferences with those representing various trades and industries in advancing these ideas—practically all of them at their request. There is to-day in actual motion effective organization co-operating with the Department in systematic and gradual



elimination of such waste. Something over 100 industries and trades are developing actual programs in various stages of attainment. They vary from a single commodity to such organizations as that which we have set up for regional action of shippers and the railways. We have thus conducted a great experimental laboratory from which we now have definite results. I have resolved to take this occasion to give to you the conclusions drawn from our experience, with the hope of their wider adoption and of your continued and increased support upon a more systematic scale.

There is no room for soap box oratory in this theme. It is necessary to get down into the dry economic fundamentals of our distribution system, for remedy lies in more tedious work of investigation and negotiation and decision. It is easy to be entertaining if we set up straw men and wail at their destruction of human liberty, to effect the discovery of wicked profiteers and leeches who are sucking out the blood of the nation, but there is little poetry and no recreation in working out these problems trade by trade.

I wish at once to make it clear that in speaking of waste, I do not mean waste in the sense of willful waste, but economic waste, which is the natural outgrowth of a competitive system. I do not mean the waste that any single individual can correct by his own initiative, but the waste that can only find remedy in collective action. Nor are the wastes to which I refer to be corrected by any extension of the Ten Commandments, or by any legislative extension thereof. You cannot catch an economic force with a policeman.

The kinds of waste that cause costly losses may be roughly catalogued as follows:

1. Waste from the speculation, relaxation of effort and extravagance of booms with the infinite waste from unemployment and bankruptcy which comes with the inevitable slump.
2. Waste from excessive seasonal character of production and distribution.
3. Waste caused through lack of information as to national stocks, of production and consumption with its attendant risk and speculation.
4. Waste from lack of standards of quality and grades.



5. Waste from unnecessary multiplication of terms, sizes, varieties.

6. Waste from the lack of uniformity of business practices in terms and documents, with resultant misunderstandings, frauds and disputes.

7. Wastes due to deterioration of commodities.

8. Waste due to inadequate transportation and terminals, to inefficient loading and shipping and unnecessary haulage.

9. Waste due to disorderly marketing, particularly of perishables, with its attendant gluts and famines.

10. Waste due to too many links in the distribution chain and too many chains in the system.

11. Waste due to bad credits.

12. Waste due to destructive competition of people who are in fact exhausting their capital through little understanding of the fundamentals of business in which they are engaged.

13. Waste due to enormous expenditure of effort and money in advertising and sales promotion effort, without adequate basic information on which to base sales promotion.

14. Waste due to unfair practices of a small minority.

15. A multitude of wastes in use of materials, in unnecessary fire destruction, in traffic accidents and many other directions.

These wastes are not the small change of industry and commerce. There is scarcely a step in this accomplishment of squeezing out waste which does not interpret itself in millions of dollars of annual saving.

As these wastes are enumerated they may seem to be of main interest to manufacturers and distributors. But in the end the public pays the bill. It is either charged into the consumers' price of goods at one end, or subtracted from the wages of producers of raw materials, such as miners and farmers, at the other end.

The work of the Department during the last three years has demonstrated that there is a vast importance to these wastes. I am disposed to agree with a recent report of the Engineering Council that they amount in many lines to 25 or 30 per cent of the cost paid by the consumer or producer of raw materials. They cannot all be corrected and where progress can be made it is only through toilsome building step by step in a thousand



places, and always and only through the coöperation of well disposed trade and industry, and through a wider understanding of the problems involved, and of the coördination of effort necessary to secure results. This is not emergency work as new wastes will constantly arise and permanent trade organizations are needed in each industry for their elimination.

There has been a vast amount of research into our distribution problems, and many publications on them during the last few years. Many have been largely directed toward discovery and exposure of some real or supposed great crime. Others have searched for a miracle panacea that would overnight effect enormous cuts in the great margin between our farmers and our consumers, or between the manufacturers and their clientele. No such panacea has been found simply because there is none. There are no short cuts to progress.

Nor are we here to worry on behalf of the lady who wishes to order a cake of yeast by telephone to be delivered by a gold colored automobile. You and I are interested in this problem solely for a better service to our producers and consumers of the primary necessities and ordinary comforts of life.

The reduction of waste means that a considerable part of our population who are busily employed in this unnecessary motion can be directed towards the production of other commodities and thus their addition to the national standard of living; it means a lowering in cost of living; or it means more goods for the same money. To our workers it means less labor, more time for recreation, and no attack upon wage levels; to our farmers it means an increased proportion of the consumers' dollar as the returns which he receives from his produce are subject to the deductions of the cost of marketing. If we decrease these costs by the elimination of the waste in them we increase the return to him. To him it also means enlarged domestic consumption. Moreover, he participates also in the benefits as a consumer. To our industrial and commercial men there is an increase in stability in business and a sounder foundation under our entire business fabric. The elimination of waste is a total asset. It has no liabilities.

I wish to again emphasize that I do not believe the remedy lies in legislation except in so far as the Government may stimu-



late and assist our citizens to better organization for these purposes and may furnish them with fundamental information which assists in the whole question.

These are the wastes which have grown naturally into our economic system. They can only be corrected by coöperative action. Such action can be built up first by investigation and information, second by conference of the producer and consumer in his various representatives and agreement to abide by the principles laid down.

Nor am I talking about abrogating the Sherman Act. I have no patience with those who deliberately try to confuse these efforts at coöperation in waste elimination with price fixing and restraint of trade. Any intelligent person who has the patience to read and think these problems through and the methods we have developed for their correction will find these efforts to be in the interest of public welfare, and free from trade restraint. They are in fact the foundations of real competition.

In order that I may make myself more clear I propose to discuss both the theory and the practice attained in the work of the Department of Commerce as a sort of economic laboratory during the last three years. Again I may repeat that this discussion is not an entertainment for holiday people. We are here to consider underlying economic questions, tedious as they may be.

#### DETERMINATION OF FACT

It is a truism to say that no individual business enterprise could succeed or be conducted without waste if it does not know accurately its stocks, the volume of output or sales, the rate of stock turnover, or its orders, or the prices, assets and liabilities and the relation of these to previous periods. Neither can the business of a trade, as a whole, or the nation itself, function efficiently unless it knows these very things.

The fundamental of every economic action is to first determine the fact. Moreover, as business is a moving thing, the facts must be recurrent in short statistics.

Statistics are a counterpoise to "psychology" in business—an anchor of basic facts to tie to—not hunches of contagious op-



timism or equally contagious pessimism, both of which directly affect the volume of production and business wrongfully and produce in themselves instability.

Again the gigantic waste from the boom of 1920, through the depreciation in value of excessive stocks, would have been much minimized if there had been more complete information as to the volume of these stocks. For instance, prior to that time we had been competing madly in bidding up prices and building up stocks of rubber and nitrates from abroad, and coal among other things at home. As a result, both producers and consumers suffered from the tremendous depreciation of these materials. This need not have happened if the trades had had the statistical information to visualize the volume of these excessive stocks.

The fact is that the greatest waste of all our economic system is the periodic inflationary boom and its consequent ensuing slump with all their speculation, unemployment and extravagance, for without boom there is no slump. The correction of this waste lies in the prevention of booms. No sensible business man wants either boom or slump. He wants stability. Our working folk should dread a boom above all things, because it means an afterclap of unemployment and misery. Our farmers should resent a boom more than anything else that can happen in our economic system because it means that they will inevitably get the worst of the deflation which follows. Stability or instability in production and distribution is largely the result of the collective judgment of the trades. They cannot form a right judgment unless they know the facts as to their own business and as to the trade as a whole. Furthermore they must also know the probable trend of business in general as indicated by the movement in other trades.

The best protection against booms is that every business man shall have the information so that he may realize from the shifts in credit, from the movements in stocks, of production and consumption, that the economic balance wheel is moving too fast and if every man then safeguards against danger disaster never comes. Moreover the anchor of fact prevents the contagions I have referred to. So the first and foremost thing is to have such facts broadcasted so as to give to every man



that sound basis upon which his own judgment can react. Solemn statistics are the greatest preventative of speculation and profiteering ever invented. There are other important remedies for the irregularities of the business cycle. The proper control of credit against reckless speculative use and the long view planning of public construction and construction in our great industries in such a way as counter unemployment are vital contributions. But I am now discussing statistics only.

The Government can do much in collection and distribution of statistical information. Indeed the Department of Commerce has greatly improved and expanded these services in the last three years. No other nation provides so complete a service to-day. It needs still greater improvement. However, a considerable part of our statistical service can be better provided by the different trades themselves than by the Government.

Right here some tormentors of progress will rise to say that the collection of statistics by the trades may be used to flimflam the public. They can be so used. They have been so used. Likewise automobiles have been used for purposes of bootlegging but it is not necessary to suppress the use of automobiles on this account, nor is it necessary to allow them bootlegging privileges.

There is a phase of statistical service that has not been fully studied or fully explored, to which I trust this meeting will give thought. We are almost wholly lacking in the basic data as to distribution. We know our production in most important lines of activity. We know a great deal about stocks of commodities in the hands of producers. We know very little as to stocks in the hands of consumers, the area of distribution in any commodity. If we had a census of distribution I am convinced that this information would automatically eliminate a great amount of waste in the whole distribution machinery. High pressure selling and marketing expenditure in unprofitable areas is a national waste. We do not know where these areas are to-day.



## STANDARDS OF QUALITY AND GRADE

Next to statistics as a power to eliminate waste comes standards.

In order to have standards we must have methods of test by which the fidelity to these standards can be determined. We must have a definition of terms which we apply to these standards. We must have a formulation of specifications to express these terms. Here we enter upon involved problems of chemistry and physics and trade practice and public need and legal implications of the widest character.

Some years ago we established standards of quality in the purchase of cement by the Federal Government and at the same time we established the tests which should be applied to determine whether these standards had been fulfilled. At that time cement manufacturers were each endeavoring to establish their own standards and the consumers setting up counter demands of performance. The consumer was unable to determine the character of the product which he received and the manufacturer had no assurance upon which to proceed in satisfaction of the consumer. The Federal standards for cement have to-day become the universal standard in both manufacture and distribution. This standard has simplified the production processes. It has simplified all contracts. The tests are well known which determine the fidelity of the manufacturer and secure him against misrepresentation from the consumer. No doubt new standards must be determined from time to time with the progress of industry and commerce but every standard established carries with it an elimination of millions of waste in production, in business transactions, and waste by failure of the commodity itself. This same problem lies at the bottom of producing and marketing of agricultural produce. If we had more effective standards in perishable foods to-day we would be on the road to large savings for the farmer. The foundation of proper standards is scientific investigation and then coöperation of the representatives of the producer, the distributor, and consumer in bringing them to practical workday conditions.



These standards also extend to determination of nomenclature. For when we speak of No. 1 clears in lumber we must define what it consists of. I do not propose to burden you with the great number of standards of quality that have been established in the last three years by the Department of Commerce in coöperation with the producers, distributors and consumers. They range through literally scores of commodities. They are the foundations upon which both fidelity and economy in our business processes revolve and are the first instrument in eliminating fraud, dispute and costly litigation.

### STANDARDS OF DIMENSION

We need standards not only of quality but also of dimension. Standards of quality, standards in terms, and standards in dimensions at once eliminate a vast amount of unnecessary varieties—all of which we comprehend under the term "simplification."

During the last three years the Department has, in coöperation with the industries concerned, installed these simplifications of dimensions and varieties in a multitude of commodities. For instance, the dimensions of paving brick have reduced from 66 to 5 different sizes; of rasps and files from 1351 to 496; in wire fencing from 552 to 69; in milk bottles from 49 to 9; in lumber 60 per cent of the variations in sizes were eliminated; in hotel and institutional china the sizes and varieties were reduced from 700 to 160. These are a few instances among many, and in themselves may appear trivial but they represent literally millions of annual savings in even this small sector of our national waste.

This particular process has a vital bearing upon the reduction of the cost of distribution. There is by these means created the possibility of more rapid turnover, less volume of stocks, and less dead stocks.

And there is an implication of this establishment of standards and elimination of unnecessary dimensions and varieties which is often overlooked. It sharpens the knife of competition for there is much less competition between dissimilar ar-



ticles than between articles of the same quality, designation and character.

As a practical example of what standardization means, take the average stock carried by a general plumbing supply house. Thousands of parts are carried a large part of which are usable on only a few kinds, styles or types of equipment. Every builder of a bathroom must pay for the large capital tied up in stocks, extra clerks to keep the stock in order, extra wages to plumbers for installing of a hundred styles, each calling for different specifications.

We spent five billion in building in 1924. How much could have been saved with more simplified parts in plumbing equipment, hardware, lumber, bricks, doors, windows, et cetera; all down the line from the factory that turns out the stock, the warehouses that must carry the stocks, and the workmen that make the installations?

Wasteful competition due to purposely making odd sizes often occurs in the mistaken idea that it gives the manufacturer a competitive advantage. The only case where unlimited diversification seems justified is padlock keys.

At this point I wish to answer another of the tormentors of progress—the one who finds great humor in standardizing women's hats. No serious person has ever given thought to the standardization of style or the freezing of quality, or the elimination of individualism. What we want is to know what is being dealt in and eliminate unnecessary duplication. Moreover we are concerned only with those commodities which are common necessities of life. To have established interchangeability of all the bolts and nuts in the United States so that a bolt or nut or nipple of a given dimension will screw onto every bolt or pipe of the same dimension has been one of those unsung accomplishments that have made more for public welfare than most of the oratory for a year. With all of its ramifications in cheapening of industrial production of repairs, of decreasing the volume of stocks in distribution and the dead stocks for which there is no demand, even this apparently insignificant item can claim tens of millions of savings to its credit.



## SIMPLIFICATION OF BUSINESS PRACTICES

Our production and distribution moves on wings of documents. We make specifications and contracts and receipts and invoices and bills of lading and forms and documents of a thousand varieties. All of the contractual documents are presumed to express mutual agreement of the buyer and seller, but they do not do so as witness three-fourths of the occupation of our courts. The reason they do not express mutual agreement is because the terms mean different things to different minds and above all every individual establishment or service has different bases of documentation.

Recently a conference of the furniture and merchandise warehousemen developed that over 200 different warehouse documents were in use to serve a single purpose and they were by common action reduced to single standard form. This narrow sector of one trade estimates there is a saving of five million dollars a year in clerical work and beyond that vast saving in litigation and disputes.

Another phase of this same problem is that of specifications, which is the expression of standards. At the beginning of this administration I undertook to establish standard specifications for the purchases of goods by the Federal Government. We were using different specifications in every department, for the same commodities, all changing frequently. That work has proceeded under the Bureau of the Budget, with the coöperation of this Department, until it has eliminated literally thousands of differences. As I said before, a determination of specification must be subsequent to determination of standards in quality and dimension. These things are determined not alone by scientific investigation but in consultation with manufacturers as to what will secure the best article at the least production cost. The savings to the taxpayer by enabling the Government to secure precise bids and commercially sound articles is of the utmost importance, but far more than this the general public is now beginning to adopt these specifications and standards, which gradually simplifies problems of manufacturers and distributors.



At the request of many national purchasing agencies we undertook to investigate the whole field of specifications. In this work we undertook to collect the different specifications in current use in commerce. We have so far received from the trades 40,000 different specifications now in current use. In coöperation with committees from the different trades we are endeavoring to work out some standard specifications. Behind this of course lies the whole process of establishing standards of quality, dimension, etc. When specifications are agreed upon with the coöperation of representatives of both the consuming trades and the producing trades, they reduce unnecessary variety, they decrease cost of production and distribution, they are a real contribution to the elimination of waste. If we ever succeed in these reforms in commercial documentation we will not only add stability to commerce and reduction of prices, but we will create unemployment in the legal profession,

### TRADE ETHICS

There is a problem in waste which revolves in the field of trade ethics. Unfair competition of course is waste as it imposes wasteful processes and wasteful and fraudulent practices on other members of the trade and the public. It is prohibited by law. The law is, however, very obscure in determination of what is an unfair practice.

In the field of business ethics we have seen a great advance in the last two decades and chiefly due to the effort of the better trade associations. This brings up an interesting question as to the use which might be made of trade opinion and determination of what is unfair competition. Our English common law was a crystallization into law of trade practices which anteceded it many centuries but with their crystallization into law, and with the development of the industrial era with its multitude of new methods of violating the Ten Commandments, trade opinion and custom effecting probity and fairness has had but little representation in the formulation of rules. It would seem worth considering that the voices of the large



majority of a given trade might be given weight in the determination of what is unfair. It might lead to a degree of self government of industrial and trade morals which would free us from much regulation.

### WASTEFUL COMPETITION

There are processes of wasteful competition which are entirely outside of legal interpretation of unfair competition. They rise chiefly from ignorance of efficient methods of conducting business and they impregnate our whole system of distribution from top to bottom.

Few people who have examined our distributive methods will deny that a minor element of our retail traders are so ignorant of the primus of accounting that they unconsciously deplete their capital to the point of exhaustion before they cease operations. It is also generally apparent that such people are dangerous competitors, who undermine the whole scheme of fair competition and thus do far more damage than their numbers might imply. These men are sure to result eventually in failures with a consequent waste of capital, which is reflected in higher costs to the consumer. It is not in the interest of the public to have so many units in any trade that they cannot all operate efficiently at a living wage; it means a vast duplication and in the end imposes charges and waste on the ultimate purchaser.

The only remedy that I know is education. For some time the Department of Commerce has been attacking this problem with the aim of spreading among this section of the business public a better knowledge of what constitutes efficient trade practices. An indication of the interest evidenced by the public is seen in a demand for over 55,000 copies of the first bulletin issued. Comprehensive plans are being laid and followed by the Department to collect and disseminate knowledge of best merchandizing practices in many trades. Requests from many branches of commerce to aid in solving specific problems have fairly deluged this organization of the Department. I cite this fact particularly, as the methods being applied are those of



scientific analysis and treatment which I have just recommended.

### WASTE IN TRANSPORTATION

Expeditious, regular transportation is a fundamental necessity. Any stricture or clog brings untold wastes in distribution. A coal car shortage not alone raises the price of coal but it dislocates production and distribution right and left. The penalties of any transportation failure are far greater than the whole freight charge on the commodity in motion. Due to the energies of our railway managers we have now emerged from this particular chaos of the war. We have, however, a problem in freight terminals which has not grown in tune with our cities. There are cities where the terminal distribution costs on many commodities, particularly perishables, are larger than some long haul rates. The problem is by no means one that can be entirely solved by the railways. There are wastes in transportation for which the shipper is responsible—wastes of partial car loading, wastes of long routing and cross haul, wastes of bad packing, wastes in reconsignment. They probably aggregate a half billion a year over what we could do if we did it better. The voluntary regional committees of shippers and railway operatives now functioning in these fields are bringing much economy.

### DUPLICATION OF DISTRIBUTION FACILITIES

Obviously one of the greatest wastes in our whole distribution system is the unnecessary number of links in the distribution chain and the excessive number of chains. This is, however, the most intangible, imponderable problem in the whole gamut of distribution wastes.

I do not think anyone will deny that we have more retail and wholesale establishments than we need in all sorts of directions and that, therefore, there is imposed upon the distribution system a vastly larger overhead than is necessary. There is no way of preventing a man going into business if he wants to,



nor would it be desirable, for if we were to limit the number of people who enter into any profession or occupation we would set social currents going that would be the destruction of the whole system.

Every time we set up a standard, every time we set up a better understanding of accounting and principles of business, we will, in ultimate effect, diminish the excessive number of units by bringing competition into the more legitimate foundations of intelligent action and as a result will tend to diminish this excessive membership in the trades with their wasteful overhead charged against the consumer.

### OTHER WASTES

It is not my purpose to go into those fields of improvement in power, waterways, building methods, seasonal operations, scientific investigation in the use of materials, and a dozen directions—for we are here dealing primarily with existing wastes in distribution. The wastes in these other directions are of vast importance and can be organized out.

We may question ourselves as to what part this conference can take in such a program, if it meets with your approval as it has already met with the approval of many of your members. The distribution trades can play the greatest part because not only organized coöperation to determine what should be eliminated, but also the practical enforcement of such eliminations lies entirely within the distribution trades. The organization of the distributors can absolutely enforce standards and simplifications and other waste eliminations which are initiated in coöperation with the production industries. In every instance where the Department has coöperated with the manufacturers in bringing about these changes, they and we have been anxious to secure the assistance of the distribution trades to participate. The power of enforcement of all this program lies in the hands of the distributors of the United States. By so doing they will be reducing the stocks and risk which they must carry, will expedite turnover and free themselves from much dead stock.



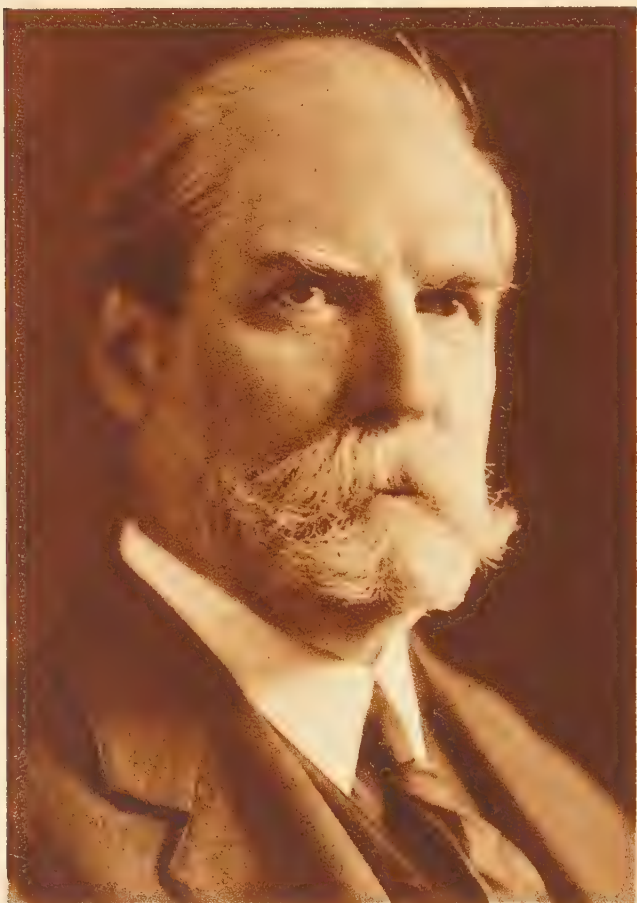
Our economic system has developed marvelously as the result of individual initiative. We must preserve that. But there is also the initiative of the trade or group which we must equally develop if we are to perfect this system. It will not undermine the initiative of the individual—it will support it.

Our merchant spirit has seen a great evolution into service during this last score of years. The merchant to-day earnestly gives service with his goods. He is concerned with the service which his goods perform—he is concerned with the good of the community. What we need now is to extend this spirit of service by the group as a whole.









CHARLES E. HUGHES



# CHARLES E. HUGHES

## TO THE CONFERENCE

The Conference on the Limitation of Armaments assembled in Continental Hall in Washington on November 12, 1921, with a full attendance of delegations from the United States, England, France, Italy, Japan, China, Holland, Belgium and Portugal. This first session, expected to consist only of formal addresses of welcome and the interchange of civilities, provided, on the contrary, a profound dramatic interest in Secretary Hughes' address.

THE President invited the Governments of the British Empire, France, Italy and Japan to participate in a conference on the subject of limitation of armament, in connection with which Pacific and Far Eastern questions also would be discussed. It would have been most agreeable to the President to have invited all the Powers to take part in this conference, but it was thought to be a time when other considerations should yield to the practical requirements of the existing exigency, and in this view the invitation was extended to the group known as the Principal Allied and Associated Powers, which, by reason of the conditions produced by the war, control in the main the armament of the world. The opportunity to limit armament lies within their grasp.

It was recognized, however, that the interest of other powers in the Far East made it appropriate that they should be invited to participate in the discussion of the Pacific and Far Eastern problems, and, with the approval of the five Powers, an invitation to take part in the discussion of those questions has been extended to Belgium, China, The Netherlands and Portugal.

The inclusion of the proposal for the discussion of Pacific and Far Eastern questions was not for the purpose of embarrassing or delaying an agreement for limitation of armament, but rather to support that undertaking by availing ourselves



of this meeting to endeavor to reach a common understanding as to the principles and policies to be followed in the Far East and thus greatly to diminish and, if possible, wholly to remove, discernible sources of controversy. It is believed that by interchanges of views at this opportune time the Governments represented here may find a basis of accord and thus give expression to their desire to assure enduring friendship.

In the public discussions which have preceded the conference, there have been apparently two competing views; one, that the consideration of armament should await the result of the discussion of Far Eastern questions, and another, that the latter discussion should be postponed until an agreement for limitation of armament has been reached. I am unable to find sufficient reason for adopting either of these extreme views. I think that it would be most unfortunate if we should disappoint the hopes which have attached to this meeting by a postponement of the consideration of the first subject.

The world looks to this conference to relieve humanity of the crushing burden created by competition in armament, and it is the view of the American Government that we should meet that expectation without any unnecessary delay. It is therefore proposed that the conference should proceed at once to consider the question of the limitation of armament.

This, however, does not mean that we must postpone the examination of the Far Eastern questions. These questions of vast importance press for solution. It is hoped that immediate provision may be made to deal with them adequately, and it is suggested that it may be found to be entirely practicable through the distribution of the work among designated committees to make progress to the ends sought to be achieved without either subject being treated as a hindrance to the proper consideration and disposition of the other.

The proposal to limit armament by agreement of the powers is not a new one, and we are admonished by the futility of earlier effort. It may be well to recall the noble aspirations which were voiced twenty-three years ago in the imperial rescript of his Majesty the Emperor of Russia. It was then pointed out with clarity and emphasis that, "The intellectual



and physical strength of the nations, labor, and capital are for the major part diverted from their natural application and unproductively consumed. Hundreds of millions are devoted to acquiring terrible engines of destruction, which, though to-day regarded as the last word of science, are destined to-morrow to lose all value in consequence of some fresh discovery in the same field. National culture, economic progress and the production of wealth are either paralyzed or checked in their development. Moreover, in proportion as the armaments of each power increase, so do they less and less fulfill the object which the Governments have set before themselves. The economic crisis, due in great part of the system of armaments *à l'outrance* and the continual danger which lies in this massing of war materials, are transforming the armed peace of our days in a crushing burden, which the peoples have more and more difficulty in bearing. It appears evident, then, that if this state of things were prolonged it would inevitably lead to the calamity which it is desired to avert, and the horrors of which make every thinking man shudder in advance. To put an end to these incessant armaments and to seek the means of warding off the calamities which are threatening the whole world—such is the supreme duty which is to-day imposed on all States.”

It was with this sense of obligation that his Majesty the Emperor of Russia proposed the conference which was “to occupy itself with this grave problem,” and which met at The Hague in the year 1899.

Important as were the deliberations and conclusions of that Conference, especially with respect to the pacific settlement of international disputes, its results in the specific matter of limitation of armament went no further than the adoption of a final resolution setting forth the opinion “that the restrictions of military charges, which are at present a heavy burden on the world, is extremely desirable for the increase of the material and moral welfare of mankind,” and the utterance of the wish that the Governments “may examine the possibility of an agreement as to the limitation of armed forces by land and sea, and of war budgets.”

It was seven years later that the Secretary of State of the United States, Mr. Elihu Root, in answering a note of the



Russian Ambassador suggesting in outline a program of the Second Peace Conference, said: "The Government of the United States, therefore, feels it to be its duty to reserve for itself the liberty to propose to the Second Peace Conference, as one of the subjects for consideration, the reduction or limitation of armaments, in the hope that, if nothing further can be accomplished, some slight advance may be made toward the realization of the lofty conception which actuated the Emperor of Russia in calling the First Conference." It is significant that the Imperial German Government expressed itself as "absolutely opposed to the question of disarmament," and that the Emperor of Germany threatened to decline to send delegates if the subject of disarmament was to be discussed. In view, however, of the resolution which had been adopted at the First Hague Conference, the delegates of the United States were instructed that the subject of limitation of armament "should be regarded as unfinished business, and that the Second Conference should ascertain and give full consideration to the result of such examination as the Governments may have given, to the possibility of an agreement pursuant to the wish expressed by the First Conference." But by reason of the obstacles which the subject had encountered, the Second Peace Conference at The Hague, although it made notable progress in provision for the peaceful settlement of controversies, was unable to deal with limitation of armament except by a resolution in the following general terms: "The Conference confirms the resolution adopted by the Conference of 1899 in regard to the limitation of military expenditure; and, inasmuch as military expenditure has considerably increased in almost every country since that time, the Conference declares that it is eminently desirable that the Governments should resume the serious examination of this question."

This was the fruition of the efforts of eight years. Although the effect was clearly perceived, the race in preparation of armaments, wholly unaffected by these futile suggestions, went on until it fittingly culminated in the greatest war of history, and we are now suffering from the unparalleled loss of life, the destruction of hopes, the economic dislocations, and the widespread impoverishment which measure the cost of



the victory over the brutal pretensions of military force.

But if we are warned by the inadequacy of earlier endeavors for limitation of armament, we cannot fail to recognize the extraordinary opportunity now presented. We not only have the lessons of the past to guide us, not only do we have the reaction from the disillusioning experiences of war, but we must meet the challenge of imperative economic demands. What was convenient or highly desirable before is now a matter of vital necessity. If there is to be economic rehabilitation, if the longings for reasonable progress are not to be denied, if we are to be spared the uprising of peoples made desperate in the desire to shake off burdens no longer endurable, competition in armament must stop. The present opportunity not only derives its advantage from a general appreciation of this fact, but the power to deal with the exigency now rests with a small group of nations, represented here, who have every reason to desire peace and to promote amity.

The astounding ambition which lay athwart the promise of the Second Hague Conference no longer menaces the world, and the great opportunity of liberty-loving and peace-preserving democracies has come. Is it not plain that the time has passed for mere resolutions that the responsible Powers should examine the question of limitation of armament? We can no longer content ourselves with investigations, with statistics, with reports, with the circumlocution of inquiry. The essential facts are sufficiently known. The time has come, and this Conference has been called, not for general resolutions or mutual advice, but for action. We meet with full understanding that the aspirations of mankind are not to be defeated either by plausible suggestions of postponement or by impracticable counsels of perfection. Power and responsibility are here and the world awaits a practicable program which shall at once be put into execution.

I am confident that I shall have your approval in suggesting that in this matter, as well as in others before the Conference, it is desirable to follow the course of procedure which has the best promise of achievement rather than one which would facilitate division; and thus, constantly aiming to agree so far



as possible, we shall, with each point of agreement, make it easier to proceed to others.

The question, in relation to armament, which may be regarded as of primary importance at this time, and with which we can deal most promptly and effectively, is the limitation of naval armament. There are certain general considerations which may be deemed pertinent to this subject.

The first is that the core of the difficulty is to be found in the competition in naval programs, and that, in order appropriately to limit naval armament, competition in its production must be abandoned. Competition will not be remedied by resolves with respect to the method of its continuance. One program inevitably leads to another, and, if competition continues, its regulation is impracticable. There is only one adequate way out and that is to end it now.

It is apparent that this cannot be accomplished without serious sacrifices. Enormous sums have been expended upon ships under construction, and building programs which are now under way cannot be given up without heavy loss. Yet if the present construction of capital ships goes forward, other ships will inevitably be built to rival them, and this will lead to still others. Thus the race will continue, so long as ability to continue lasts. The effort to escape sacrifices is futile. We must face them or yield our purpose.

It is also clear that no one of the naval Powers should be expected to make these sacrifices alone. The only hope of limitation of naval armament is by agreement among the nations concerned, and this agreement should be entirely fair and reasonable in the extent of the sacrifices required of each of the Powers. In considering the basis of such an agreement and the commensurate sacrifices to be required, it is necessary to have regard to the existing naval strength of the great naval Powers, including the extent of construction already affected in the case of ships in process. This follows from the fact that one nation is as free to compete as another, and each may find grounds for its action. What one may do another may demand the opportunity to rival, and we remain in the thrall of competitive effort. I may add that the American delegates are advised by their naval experts that the tonnage of capital ships



may fairly be taken to measure the relative strength of navies, as the provision for auxiliary combatant craft should sustain a reasonable relation to the capital ship tonnage allowed.

It would also seem to be a vital part of a plan for the limitation of naval armament that there should be a naval holiday. It is proposed that for a period of not less than ten years there should be no further construction of capital ships.

I am happy to say that I am at liberty to go beyond these general propositions, and, on behalf of the American delegation acting under the instructions of the President of the United States, to submit to you a concrete proposition for an agreement for the limitation of naval armament.

It should be added that this proposal immediately concerns the British Empire, Japan and the United States. In view of the extraordinary conditions, due to the World War, affecting the existing strength of the navies of France and Italy, it is not thought to be necessary to discuss at this stage of the proceedings the tonnage allowance of these nations, but the United States proposes that this matter be reserved for the later consideration of the Conference.

In making the present proposal the United States is most solicitous to deal with the question upon an entirely reasonable and practicable basis to the end that the just interests of all shall be adequately guarded, and the national security and defense shall be maintained. Four general principles have been applied:—

1. That all capital shipbuilding programs, either actual or projected, should be abandoned;
2. That further reduction should be made through the scrapping of certain of the older ships;
3. That, in general, regard should be had to the existing naval strength of the Powers concerned;
4. That the capital ship tonnage should be used as the measurement of strength for navies, and a proportionate allowance of auxiliary combatant craft prescribed.

With the acceptance of this plan the burden of meeting the demands of competition in naval armament will be lifted. Enormous sums will be released to aid the progress of civilization. At the same time the proper demands of national



defense will be adequately met and the nations will have ample opportunity during the naval holiday of ten years to consider their future course. Preparation for offensive naval war will stop now.

[Secretary Hughes then detailed the principal features of the proposed agreement.]



# WILLIAM E. HUMPHREY

## THE FEDERAL TRADE COMMISSION

The following address explaining and vigorously defending the new policy of the Federal Trade Commission was delivered before the Economic Club at the Hotel Astor, New York City, on April 28, 1926. The Honorable William E. Humphrey was born in 1862 and has been a resident of Seattle, Washington, since 1893. He was a member of Congress from 1903 to 1917, and in 1925 was appointed a member of the Federal Trade Commission.

THE Act creating the Federal Trade Commission provides that it is the duty of the Commission, whenever it shall have reason to believe that a party is using any "unfair methods of competition," to proceed against such party, provided that it shall appear to the Commission that such proceeding "*would be to the interest of the public.*"

In the "*interest of the public*" is the chart and compass that should direct always the course of the Commission. Since I became a member of the Commission, although it has been but a short time, many changes have been made in its purpose and methods. I believe these changes are right and in the public interest I believe that these changes are in the interest of honest business. It is my purpose to tell you briefly some of the more important changes that have been made, and why they were made. For all these changes, the credit and responsibility belongs equally to each member of the majority of the Commission.

The majority believe that those engaged in business are generally honest. The foundations of the changes in the rules are found in the fact that the majority believe that there should be some reasonable showing before branding as crooks those accused of breaking the anti-trust laws. We demand



evidence. We refuse to convict on suspicion and possibilities.

In the past, when a complaint was received, an *ex parte* investigation was made. Sometimes these investigations were extensive, often they were superficial, and not infrequently they were merely formal. Upon such an investigation, a complaint was issued against the respondent—that being the term used to designate those against whom the Commission proceeds—and immediately upon the issuance of this complaint, the Commission itself officially gave out publicity as to the charges against the respondent. Such publicity, coming with the official stamp, especially in cases where the respondent was prominent or the political effect important, was given wide circulation. Particularly was this true of any sensational statements made in the publicity. It sometimes happened that the respondent knew nothing of the matter whatever until he saw himself advertised as a crook by the headlines in the public press, and never was the respondent given an opportunity to be heard before such publicity was issued. It frequently happened that thereafter, on the hearing of the case, sometimes months afterwards, sometimes years afterwards, it was found that the respondent was entirely innocent and the case was dismissed. But this dismissal brought no headlines in the press. It was not news. It furnished no text for socialistic and bolshevist propaganda. It furnished no political weapon for those who preach the doctrine of universal dishonesty in the conduct of American business. The injury done to the respondent, the poison injected into the public mind was not removed by the dismissal of the case.

My mind goes back down the centuries to a scene enacted in the streets of Jerusalem, one of the outstanding events in the record of the race, when the mob cried out for the death of Paul, the greatest of the apostles. To satisfy this cry the chief captain, not knowing whether he was guilty or innocent, or even what the charge might be against him, ordered that he be scourged. They seized and bound him. Then Paul asked them the question that has lived through the ages—"Is it lawful to scourge a man, a Roman citizen and uncondemned?" When the centurion heard this question, he told the chief captain and warned him of the consequences of scourging a Roman



citizen without trial. Immediately the chief captain ordered the apostle unbound and set free.

We are told that in that elder day to be a Roman was greater than to be a king. In this day, certainly it is greater to be an American than it was in that elder day to be a Roman. Should we show less consideration to the American citizen than was shown to the Roman citizen? Personally I do not believe that we should to-day at the cry of the mob, the Bolshevik, the reformer and the fool, treat the American business man as only a barbarian was treated nearly two thousand years ago. I think the time has come to stop scourging American Business first and finding out afterwards whether it is guilty or innocent.

Let me give you an illustration. In giving these illustrations, the facts may not be exactly as they occurred. If they are not, they might very easily have occurred. The Commission issued a complaint against a company, charged with having illegally acquired the stock and assets of several competitors. That respondent had arranged to borrow some forty million dollars to finance this transaction. When the case came to trial, it was found that the transaction was perfectly legitimate and would have been to the public interest. But what a travesty on justice! The publicity given out when the complaint was issued caused the banks to withdraw the loan, the credit of the respondent was destroyed, it was a bankrupt long before the case was heard. Not only the respondent, but the other companies that were to be consolidated with it, were ruined, and a great, legitimate industry destroyed. Both the public and the respondent were entirely without redress.

#### SETTLEMENT BY STIPULATION

There is another change we have made that I think is of tremendous importance. We have adopted a rule that when our investigators make a report and we deem the facts sufficient to warrant the issuance of a complaint, we give the parties accused an opportunity to be heard before we issue a complaint. We believe that this is only fair and just, because we have heard those who have complained against the respondent.



Usually those making complaints are competitors of the respondent, and inasmuch as they had made their statements, we thought it but fair to give the respondent an opportunity to state his side of the case. After the respondent has made his statement, if we are satisfied that he is violating the law and is willing to sign a stipulation that he will quit such practice, with a condition in such stipulation that if he fails to keep it, that such stipulation may be used against him, we accept that stipulation instead of proceeding to trial, and the action is dismissed.

Remember that we have no power to punish. We have authority only to issue orders to cease and desist. If the respondent agrees by stipulation to quit the practice complained of, why is not the public interest as fully protected as it could possibly be by the issuance of an order?

It seems to me that our plan of stipulation not only accomplishes all that can be secured by trial, and saves the public expense, but that it is in harmony with the spirit of our jurisprudence, that always hold out every inducement to settle controversies by compromise and settlement without litigation, so long as the public interest is protected. And let it not be forgotten that in many cases a stipulation can be secured where conviction on trial would be impossible.

Do not forget that our rules in regard to publicity and to stipulation do not apply in cases where the business itself is inherently fraudulent or where the business is legitimate but is conducted in such a manner as to show the dishonesty of those engaged in it, or where the record and reputation of those complained of are such as to warrant the Commission in believing that a stipulation would not be honestly entered into, or honestly observed. To this class of cases belong stock selling schemes, those that commonly come under what is designated as the "Blue Sky Laws"; the so-called industrial schools, with their false and misleading advertisements, that are robbing and blackmailing the ambitious young men and women of to-day who are endeavoring to better their conditions; the merchant who sells one class of goods and delivers another to the purchaser. The public interest demands in cases of this kind, an immediate exposure of such parties. Stipulations with



them would not be justified on any ground. The Commission will give the widest publicity in its dealings with crooks. We accept no stipulations from this class. We call the attention of the Department of Justice to such cases when we believe they should be prosecuted, and to the postal authorities when we believe a fraud order should be issued.

### OBJECTIONS TO STIPULATIONS

Nothing has aroused greater opposition from those who are opposed to the change in rules than our policy in settling cases by stipulation. Our opponents say that this should not be done; that in all cases where stipulations are warranted, the case should proceed to trial. As I construe it, the primal duty of the Commission is to protect the public from unlawful practices. If this can be accomplished by stipulation instead of litigation, leaving out of the question the great cost to the taxpayer in these days of dire necessity for economy, what can be the objection to so stipulating? I know the objection voiced by the opponents to such procedure. They say that they want to terrorize dishonest business. To use the stock phrase of the professional demagogue, they tell us that they want to "put the fear of God into the hearts of the dishonest."

I will not stop to discuss whether giving publicity—parading on front pages, over sensational headlines the details of fraud and vice and crime, tends to lessen these evils or benefit the public. But while we are terrorizing the ten men in business that are dishonest, are we not at the same time terrorizing the ninety men that are honestly trying to obey the law? It is absolutely dishonest to claim that there is a clear and distinct line between what is and what is not unlawful under the anti-trust acts. It is, therefore, absolutely dishonest to say that when they are violated, it is always done purposely. It is absolutely dishonest to say that when men violate the anti-trust act, their action is always as reprehensible and that it is done as knowingly as when men violate laws that for ages have been recognized by common consent without statutes. The Supreme



Court of the United States has many times divided upon what action constituted an unfair method of competition.

Only within the last few weeks, two cases of very great importance have been decided by the Supreme Court of the United States, in which the judges were divided, four to five, as to whether certain facts constituted a violation of the law. If that great Court, the greatest that the world has ever known, with men whose integrity is above suspicion, and of great ability—if these men cannot agree always upon what facts constitute a violation of the Anti-Trust Laws, how can any sane and honest man say that a business man always knows with certainty when he is violating the Anti-Trust Laws?

The chief objection to settling cases by stipulation lies in the fact that it tends to lessen the publicity that the demagogue and the fanatic wish to use in their propaganda of socialism and discontent.

#### RESULT OF STIPULATION

The proof of the pudding is the eating thereof. What has been the practical result of this rule of stipulation? It has now been in effect just one year. I know of no way so fairly to show what has been accomplished under the new rule, as to compare with it what was done under the old rule for the last year of its existence. Particularly do I think this a fair comparison, as the minority who now oppose the new rule had complete control of the Commission's affairs during the last years of the old.

During the last year under the old rule, the Commission issued 54 orders to cease and desist. That means that by these orders the public was protected from the unlawful actions of 54 concerns, assuming that none of these cases were appealed and that all the orders were obeyed, a supposition that is, of course, not correct. Under the old rule, the public was protected from the unfair practices on an average of one concern each week. I submit that this is not a bad record, and shows that the Commission was justifying its existence.

Let us look at the other side of the picture. What has been



the result of the first year under the new rule? Of course, it took some time for the new rule to come into full force, especially as it applied only to cases brought after its adoption. During the first year of this rule, in spite of this restriction, the public was protected from the fraudulent practices of 270 concerns—54 by orders and 216 by stipulation. In other words, the new rule has given the public five times as much protection as the old, and, of course, the one great purpose of the establishment of the Commission was to protect the public interest. Or, to state it in another way, using the first year of the new rule and the last year of the old rule as a basis of comparison, we have accomplished more under the new rule in one year than we would have accomplished under the old rule in five years.

The big thing, the overshadowing thing, in the work of the Federal Trade Commission, is protecting the public from these violations of law, which injure the public in countless ways. But there is also another side to this question, worthy of consideration, in these days of tax burdens such as the American citizen has never before carried—that is, the question of economy. Under the present rule of stipulation, the cost of settling cases as compared with the old system, is nominal. It costs \$2,500 more in each case to protect the public by trial and order than it does by stipulation. The new rule has already, in its first year, saved the American taxpayer approximately \$700,000.

These figures assume that the cases against the 270 concerns would have been tried and orders issued therein within the year. But, as a matter of fact, we know it would have taken several years to stop these 270 concerns by trial and order.

When you take that view of the situation, the new rule has saved the taxpayers of the country, in the first year of its operation, several million dollars, and when we remember that if all these cases had proceeded to trial instead of being settled by stipulation, not only would it have taken several years, but during that time, a large number of concerns would have continued their fraudulent operations to the injury of the public, the value of this new rule of stipulation to business and to the taxpayer cannot well be overestimated.



To sum it up, the new rule has demonstrated the first year that it has saved the public from the fraudulent practices of more concerns, has given greater protection to honest business, has saved more money to the taxpayer, than would have been done under the old rule in five years.

Let me point out another great benefit of this rule. When I went upon the Commission, we were more than 500 cases behind our docket. Under this new rule, for the first time in the history of the Commission, it is more than keeping up with the work. We are now even with the docket. We are taking care of all the new cases and have disposed of practically all the old cases. This means that hereafter, when a case is brought, instead of being months or years in deciding it, it will be disposed of promptly. There are cases upon the docket now that have been pending from five to nine years. To dispose of cases promptly will give added relief to the public and save money to the taxpayer, be fair to the accused, and of advantage to all concerned. By this new rule of stipulation we are settling more than 75 per cent of the cases of law violation promptly, saving the time of the Commission and money of the taxpayer, preventing of wrong by unjustified publicity both to the public and the accused, and above all, we are more fully protecting the public interests.

I have spoken in different parts of the country upon this rule of stipulation. I have watched with some care the press comments and I have yet to find a single American citizen that has not approved this stipulation rule, except only that class intent on spreading the propaganda that success and dishonesty in American business are synonymous.

#### DOCUMENTS VOLUNTARILY SUBMITTED

Recently the press and certain members of Congress have had much to say because the Federal Trade Commission refused to turn over to the Department of Justice certain documents we had in the celebrated Aluminum case.

It is true that we did refuse to turn over certain papers to the Department of Justice in this case, but the rule was not



adopted for the purpose of the Aluminum case—it was adopted and in force long before the Aluminum case arose. Those who criticize this action on behalf of the Commission strikingly illustrate what Shakespeare so truthfully describes as “lying with a circumstance.” In other words, they do not tell the whole truth. The papers we refuse to turn over to the Department of Justice are papers that are voluntarily submitted to us in confidence; documents that we have no right to demand and cannot compel the parties to give us, documents that are voluntarily given to us in confidence and under promise to the parties giving them that such documents will not be used by any one else.

We wish to have the confidence of business and of the public. We cannot expect that confidence unless we deserve it. We cannot deserve it, if we practice deception. If we were to betray the confidence of those, who in confidence, and under promise of protection, submitted to us documents that we requested—and that we could only secure by their voluntary action—we would deserve the condemnation of all decent men. I want to emphasize that all the shrieks and demonstrations, and misrepresentations of self seeking demagogues, paid reformers, and salaried patriots, seeking only their own selfish advantage, will not make us do this infamous thing.

I want the citizens of this country to know that the Federal Trade Commission will deal with them on the square. If they deal with us confidentially, that confidence will not be betrayed. If they submit documents to us under such circumstances, such documents will not be used by any one but the Commission, except upon the permission of those giving them to us, or upon a proper order of the court.

Whatever may have been done in the past, I want every one to know that hereafter the Commission is not going to act as a smelling committee or detective agency for any other department of the Government.

### OUR CREED

I express the faith of the majority of the Commission as it is composed to-day, when I say:



We do not believe that success is a crime;

We do not believe that failure is a virtue;

We do not believe that wealth is presumptively wrong;

We do not believe that poverty is presumptively right;

We do not believe that industry, economy, honesty and brains should be penalized;

We do not believe that incompetency, extravagance, idleness, and inefficiency should be glorified;

We do not believe that big business and crooked business are synonymous.

True we will give closer scrutiny to big business than to small business, because of its greater power for good or evil.

We believe that 90% of American business is honest.

We believe that 90% of American business is anxious to obey the law.

We want to help this 90% of honesty.

We want to control or destroy the 10% that is crooked.

In this endeavor, we want your help. We hope to deserve it.









OTTO H. KAHN



# OTTO HERMANN KAHN

## THE NEW YORK STOCK EXCHANGE AND PUBLIC OPINION

Otto Hermann Kahn has been a member of the banking firm of Kuhn, Loeb & Co. since 1897 and has long been distinguished as a director of affairs in the world of music and art, as well as in that of finance. Although he was born in Germany in 1867, his father was a naturalized American citizen and he himself has passed most of his life in England and the United States. During the World War he was active in both speech and deeds on the side of the Allies and of his adopted country. Since the War, Mr. Kahn has written and spoken widely on the problems of reconstruction and especially those of taxation and finance. The present address was given at an annual dinner of Stock Exchange Brokers in New York.

A FEW weeks ago I went to Washington to contradict, as a voluntary witness before a Committee of Congress, under the solemn obligation of my oath, a gross and wanton calumny which, based upon nothing but anonymous and irresponsible gossip, had been uttered regarding my name.

On my way between New York and Washington, thinking that, once on the stand, I might possibly be asked a number of questions more or less within the general scope of the Committee's inquiry, I indulged in a little mental exercise by putting myself through an imaginary examination.

With your permission, I will state a few of these phantom questions and answers:—

QUESTION:

*There is a fairly widespread impression that the function of the Stock Exchange should be circumscribed and controlled by some governmental authority; that it needs reforming from without. What have you to say on that subject?*



## ANSWER:

I need not point out to your Committee the necessity of differentiating between the Stock Exchange as such and those who use the Stock Exchange.

Most of the complaints against the Stock Exchange arise from the action of those outside of its organization and over whose conduct it has no control. At times, no doubt, there have been shortcomings and laxity of methods in the administration of the Stock Exchange just as there have been in every other institution administered by human hands and brains. Some things were, if not approved, at least tolerated in the past which are not in accord with the ethical conception of to-day.

The same thing can be said of almost every other institution, even of Congress. Until a few years ago, for instance, the acceptance of campaign contributions from corporations, the acceptance of railroad passes by Congressmen and Senators, were regular practices which did not shock the conscience of either the recipients or the public. Now they are no longer tolerated by public opinion, and have rightly been made illegal.

Ethical conceptions change; the limits of what is morally permissible are drawn tighter. That is the normal process by which civilization moves forward.

The Stock Exchange never has sought to resist the coming of that more exacting standard. On the contrary, in its own sphere it has ever aimed to advance the standard, and it has shown itself ready and willing to introduce better methods whenever experience showed them to be wise or suggestion showed them to be called for.

In its requirements for admission of securities to quotation, in the publicity of its dealings, in the solvency of its members, in its rules regulating their conduct and the enforcement of such rules, the New York Stock Exchange is at least on a par with any other Stock Exchange in the world, and, in fact, more advanced than almost any other.

The outside market "on the curb" could not exist if it were not for the stringency of the requirements in the interest of the public, which the Stock Exchange imposes in respect of the



admission of securities to trading within its walls and jurisdiction.

There is no other Stock Exchange in existence in which the public has that control over the execution of orders, which is given to it by the practice—unique to the New York Stock Exchange—of having every single transaction immediately recorded when made and publicly announced on the ticker and on the daily transaction sheet.

I am familiar with the Stock Exchanges of London, Berlin and Paris, and I have no hesitation in saying that, on the whole, the New York Stock Exchange is the most efficient and best-conducted organization of its kind in the world.

The recommendations made by the Commission appointed by Governor Hughes some time ago were immediately adopted *in toto* by the Stock Exchange. Certain abuses which were shown to have crept into its system several years ago were at once rectified. From time to time other failings will become apparent (there may be some in existence at this very moment which have escaped its attention), as failings become apparent in every institution, and will have to be met and corrected.

I am satisfied that in cases where public opinion or the proper authorities call attention to shortcomings which may be found to exist in the Stock Exchange practice, or where such may be discovered by the governing body or the membership of the Exchange, prompt correction can be safely relied upon.

Sometimes and in some respects, it is true, outside observers may have a clearer vision than those who are qualified by many years of experience, practice and routine.

If there be any measures which can be shown clearly to be conducive towards the better fulfillment of those purposes which the Stock Exchange is created and intended to serve, I am certain that the membership would not permit themselves to be led or influenced by hide-bound Bourbonism, but would welcome such measures, from whatever quarter they may originate.

QUESTION:

*Do I understand you to mean, then, that the Stock Exchange is simply a private institution and as such removed from the*



*control of governmental authorities and of no concern to them?*

ANSWER:

I beg your pardon, but that is not the meaning I intended to convey. While the Stock Exchange is in theory a private institution, it fulfills in fact a public function of great national importance. That function is to afford a free and fair, broad and genuine market for securities and particularly for the tokens of the industrial wealth and enterprises of the country, i. e., stocks and bonds of corporations.

Without such a market, without such a trading and distributing center, wide and active and enterprising, corporate activity could not exist.

If the Stock Exchange were ever to grow unmindful of the public character of its functions and of its national duty, if through inefficiency or for any other reason it should ever become inadequate or untrustworthy to render to the country the services which constitute its *raison d' être*, it would not only be the right, but the duty of the authorities, State or Federal, to step in.

But thus far, I fail to know of any valid reasons to make such action called for.

QUESTION:

*You have commenced your first answer with the words, "I need not point out to your Committee." That is a complimentary assumption, but I don't mind telling you that we here are very little acquainted with the working of the Stock Exchange or the affairs of you Wall Street men in general. What about short selling?*

ANSWER:

I do not mean to take a "holier than thou" attitude, but personally, I never have sold a share of stock short. Short sellers are born not made. But if there were not people born who sell short, they would almost have to be invented.

Short selling has a legitimate place in the scheme of things economic. It acts as a check on undue optimism, it tends to counteract the danger of an upward runaway market, it supplies a sustaining force in a heavily declining market at times of unexpected shock or panic. It is a valuable element in preventing extremes of advance and decline.



The short seller contracts to deliver at a certain price a certain quantity of stocks which he does not own at the time, but which he expects the course of the market to permit him to buy at a profit. In its essence that is not very different from what every contractor and merchant does when in the usual course of business he undertakes to complete a job or to deliver goods without having first secured all of the materials entering into the work or the merchandise.

This practice of short selling has been sanctioned by economists from the first Napoleon's Minister of Finance to Horace White in our day. While at various times laws have been enacted to prohibit that operation, it is a noteworthy fact that in every instance I know of, these laws have been repealed after a short experience of their effects.

I am informed on good authority—though I cannot personally vouch for the correctness of the information—that there is no short selling nowadays in the fairly important Stock Exchange of Tokyo, Japan. You will have seen in the papers that when President Wilson's peace message (or was it the German Chancellor's peace speech?) became known in Tokyo, the Stock Exchange there was thrown into a panic of such violence that it had to close its doors. It attempted to reopen a few days later, but after a short while of trading was again compelled to suspend.

Assuming my information to be correct, we observe here an illuminating instance of cause and effect.

Short selling does become a wrong when and to the extent that the methods and intent of the short seller are wrong. The short seller who goes about like a raging lion (or "bear") seeking whom he may devour; he who deliberately smashes values by dint of manipulation or artificially intensified selling amounting in effect to manipulation, or by causing alarm through spreading untrue reports or unverified rumors of a disturbing character, does wrong and ought to be punished.

Perhaps the Stock Exchange authorities are not always alert enough and thorough enough in running down and punishing deliberate wreckers of values and spreaders of evil omen. Perhaps there are not enough energy and determination in dealing with the grave and dangerous evil of rumor-mongering



on the Stock Exchange and in brokers' offices. I need hardly add that the practices to which I have referred are quite as wrong and punishable when they aim at and are applied to the artificial boosting of prices as when the object is the artificial depression of prices.

But after all, as the present investigation shows, even Congress, with the machinery of almost unlimited power at its hand, does not always seem to find it quite easy to hunt the wicked rumor-mongers to their lairs and subject them to adequate punishment. Yet the unwarranted assailing of a man's good name is a more grievous and heinous offense than the assailing, by dint even of false reports, of the market prices of his possessions.

QUESTION:

*We hear or read from time to time about the public being fleeced. There is a good deal of smoke. Isn't there some fire?*

ANSWER:

If people do get "fleeced," the fault lies mainly with outside promoters or unscrupulous financiers, over whom the Stock Exchange has no effective control. Some people imagine themselves "fleeced," when the real trouble was their own "get-rich-quick" greed in buying highly speculative or unsound securities, or having gone into the market beyond their depth, or when they have exercised poor judgment as to the time of buying and selling. Against these causes I know of no effective remedy, just as there is no way to prevent a man from over-eating or eating what is bad for him.

In saying this, I do not mean to imply that stock-brokers have not a duty in the premises. On the contrary, they have a very distinct and comprehensive duty towards their clients, especially those less familiar with stock market and financial affairs, and towards the public at large. And they have furthermore the duty to abstain from tempting or unduly encouraging people to speculate on margin, especially people of limited means, and from accepting or continuing accounts which are not amply protected by margin.

In respect of the latter requirement, the Stock Exchange rightly increased the stringency of its rules some years ago, and it cannot too sternly set its face against an infringement of



those rules or too vigilantly guard against their evasion.

Against unscrupulous promotion and financiering a remedy might be found in a law which should forbid any public dealing in any industrial security (for railroad and public service securities the existing commissions afford ample protection to the public) unless its introduction is accompanied by a prospectus setting forth every material detail about the company concerned and the security offered, such prospectus to be signed by persons who are to be held responsible at law for any willful omission or misstatement therein.

Such a law would be analogous in its purpose and function to the Pure Food Law. If it went beyond that purpose and function it would be apt to overshoot the mark. The Pure Food Law does not pretend to prescribe how much a man should eat, when he should eat or what is good or bad for him to eat, but it does prescribe that the ingredients of what is sold to him as food must be honestly and publicly stated. The same principle should prevail in the matter of the offering and sale of securities.

If a drug contains water, the quantity or proportion must be shown on the label, so that a man cannot sell you a bottle filled with water when you think you are buying a tonic. In the same way the proportion of water in a stock issue should be plainly and publicly shown.

The purchaser should not be permitted to be under the impression that he is buying a share in tangible assets when, as a matter of fact, he is buying expectations, earning capacity or good will. These may be, and often are, very valuable elements, but the purchaser ought to be enabled to judge as to that with the facts plainly and clearly before him.

The main evil of watered stock lies not in the presence of water, but in the concealment or coloring of that liquid. Notwithstanding the unenviable reputation which the popular view attaches to watered stock, there are distinctly two sides to that question, always provided that the strictest and fullest publicity is given to all pertinent facts concerning the creation and nature of the stock.

QUESTION:

*Is it not a fact that some of the "big men" get together from*



*time to time and determine to put the market up or down so as to catch profits going and coming?*

ANSWER:

As to "big men" meeting to determine the course of the stock market, that is one of those legends and superstitions hard to kill, inherited from olden days many years ago when conditions were totally different from what they are now, and when the scale of things and morals, too, was different.

The fluctuations of the stock market represent the views, the judgment and the conditions of many thousands of people all over the country, and indeed, in normal times, all over the world.

The current which sends market prices up or down is far stronger than any man or combination of men. It would sweep any man or men aside like driftwood if they stood in its way or attempted to deflect it.

True, men sometimes discern the approach of that current from afar off and back their judgment singly, or a few of them together, as to its time and effect. They may hasten a little the advent of that current, they may a little intensify its effect, but they have not the power to either loosen it or stop it.

If by the term "big men" you mean bankers, let me add that a genuine banker has very little time and, generally speaking, equally little inclination to speculate, and that his very training and occupation unfit him to be a successful speculator.

The banker's training is to judge intrinsic values, his outlook must be broad and comprehensive, his plans must take account of the longer future. The speculator's business is to discern and take advantage of immediate situations, his outlook is for to-morrow, or anyhow for the early future; he must indeed be able at times to disregard intrinsic values.

The temperamental and mental qualifications of the banker and the speculator are fundamentally conflicting, and it hardly ever happens that these qualifications are successfully combined in one and the same person. The banker as a stock market factor is vastly and strangely overestimated, even by the Stock Exchange fraternity itself.

May I add that a sharp line of demarcation exists between



the speculator and the gambler? The former has a useful and probably a necessary function, the latter is a parasite and a nuisance. He is only tolerated because no means have been found thus far to abolish him without at the same time doing damage to elements the preservation of which is of greater importance than the obliteration of the gambler.

. . . . .

By this time the Committee would surely feel that it had had a surfeit of my wisdom, as I am sure you must feel, but if you will be indulgent a very little while longer, I should like to say a few words more to you whose guest I have the honor to be this evening.

My recent observation of and contact with Congressmen and others in Washington have once more fortified my belief that the men, by and large, whom the country sends to Washington to represent it, desire and are endeavoring, honestly and painstakingly, to do their duty according to their light and conscience, and that, making reasonable allowance for the element of party considerations, they represent very fairly the views and sentiments of the average American. Most of them are men in moderate circumstances. Very few of them have had occasion to familiarize themselves with the laws, the history and the functionings of finance and trade, to come into relation to the big business affairs of the country, or to compare views with its active business men.

It may be assumed that, very naturally, not a few of them have failed to come to a full recognition of the facts that the mighty pioneer period of America's industrial development came definitely to an end a dozen years ago; that with it came to an end practices and methods and ethical conceptions, which in the midst of the towering achievements of that turbulent period of over-intensive, over-rapid development were, if not permitted, yet to an extent silently tolerated, and that business has willingly fallen into line and kept in line with the reforms which were called for in business as in other walks of our national life.

The opinions of the world, and particularly of the political world, travel along well-worn roads. Men are reluctant to go



to the effort of reconsidering viewpoints and conclusions which, by tradition or mental habit, have become fixed.

Many in and out of Congress are still under the controlling impress of the stormy years when certain deplorable occurrences affecting corporations and business men were brought to light; when it was demonstrated that certain abuses which had accumulated during well-nigh two generations needed to be done away with for good and all, and when the people went through the ancient edifice of business with the vacuum-cleaner of reform and regulation, using it very thoroughly—perhaps, in spots, a little too thoroughly.

Not a few politicians are still sounding the old battle cry, although the battle of the people for the regulation and supervision of corporations was fought to a finish years ago and was won by the people, and although the people themselves of late, on the few occasions when a direct proposition has been put up to them, such as recently in Missouri, have indicated that they consider the punitive and probationary period at an end and want business to have a fair chance and a square deal.

When the right of suffrage was thrown open to the masses of people in England, a great Englishman said: "Now we must educate our masters." In this country it is not so much a question of educating our masters, the people and the people's representatives (who, moreover, would resent and refuse to tolerate for a moment any such patronizing assumption), as of getting them to know us and getting ourselves to know them.

All parties concerned will benefit from coming into closer contact with one another and becoming acquainted with one another's viewpoints.

Can we honestly say that we are doing our full share to bring about such contact and to get ourselves, and what we believe in, properly understood; believe in, not only because it happens to be our job in life and our self-interest, but because in the general scheme of things it serves a legitimate and useful and necessary function for our country?

How many of us have taken the trouble to seek the personal acquaintance of the Congressmen or Assemblymen or State Senators representing our respective districts? How many of us make an effort to come into personal relationship with people,



both here and in the West and South, outside our accustomed circles? Yet an ounce of personal relationship and personal talk is worth many pounds of speech-making and publicity propaganda.

When you look a man in the face and talk to him and question him and realize in the end that he is sincere in his viewpoint, whether you share it or not, and that he is made of the same human stuff as you, much animosity, many preconceived notions are apt to vanish, and you are not so cocksure any longer that the other fellow is a destructive devil of radicalism or a bloated devil of capitalism, as the case may be.

I recall in this connection an incident which concerns my great friend, the late E. H. Harriman. He talked to me about his wish to be elected to a certain railroad board. I said: "I don't really see what use that would be to you. You would be one of fifteen men, of whom probably fourteen would be against you." He answered: "I know that, but all the opportunity I ever want is to be one of fifteen men around a table."

And the result has shown that that was all the opportunity he needed.

We cannot all have the conquering genius and force of a Harriman, but every one of us, in a greater or lesser degree, every one in some degree has the power of coöperating in the vastly important task of personal propaganda for a better understanding, a juster appreciation of each other, between East and West and North and South, between what is termed Wall Street and the men who make our laws, between business and the people.

This is the age of publicity, whether we like it or not. Democracy is inquisitive and won't take things for granted. It will not be satisfied with dignified silence, still less with resentful silence.

Business and business men must come out of their old-time seclusion, they must vindicate their usefulness, they must prove their title, they must claim and defend their rights and stand up for their convictions. Nor will business or the dignity of business men be harmed in the process.

No health organism is hurt by exposure to the open air.

Democracy wants "to be shown." It is no longer sufficient



for the successful man to claim that he has won his place by hard work, energy, foresight and integrity.

Democracy insists rightly that a part of every man's ability belongs to the community. Democracy watches more and more carefully from year to year what use is being made of the rewards which are bestowed upon material success, and particularly whether the power which goes with success is used wisely and well, with due sense of responsibility and self-restraint, with due regard for the interests of the community.

And if the consensus of enlightened public opinion should come to conclude that on the whole it is not so used, the people will find means to limit those rewards and to curtail that power. And what is true of the public attitude towards individuals holds good equally of its attitude towards organizations such as the Stock Exchange.

It is of great and urgent importance that the Stock Exchange should leave nothing undone to get itself better and more correctly understood. It should not only not avoid the fullest publicity and scrutiny, but it should welcome and seek them.

It has nothing to hide, and it should be glad to show that it has nothing to hide. It should miss no opportunity to explain patiently and in good temper what it is and stands for, to correct misunderstandings and erroneous conception. If it is attacked from any quarter deserving of attention, it should go to the trouble of defending itself. If it is made the object of calumny, it should contradict and confound the slanderer.

Its members should ever remember that while in theory the Stock Exchange is merely a market for the buying and selling of securities, actually they constitute a national institution of great importance and great power for good or ill.

They are officers of the court of commerce in the same sense in which lawyers are officers of the court of law. They should not be satisfied with things as they find them. They should not take the way of least resistance, but should ever seek to broaden their own outlook and extend the field and scope of the Stock Exchange's activities.

One of the reasons for London's financial world position is that its Stock Exchange affords a market for all kinds of securities of all kinds of countries. The English Stockbroker's



outlook and general or detailed information range over the entire inhabited globe. It is largely through him that the investing or speculative public is kept advised as to opportunities for placing funds in foreign countries. He is an active and valuable force in gathering and spreading information and in enlisting British capital on its world-wide mission.

The viewpoint of the average American investor is as yet rather a narrow one. Investment in foreign countries is not much to his liking. The regions too far removed from Broadway do not greatly appeal to him as fields for financial fructification. Yet, if America is to avail herself fully of the opportunities for her trade which the world offers, she must be prepared to open her markets to foreign securities, both bonds and stocks. If America aspires to an economic world position similar to England's, she must have among other things financial (such as, first of all, a discount market) a market for foreign securities.

As Mr. Vanderlip so well said in a recent speech: "Never did a nation have flung at it so many gifts of opportunity, such inspiration for achievement. We are like the heir of an enormously wealthy father. None too well trained, none too experienced, with the pleasure-loving qualities of youth, we have suddenly, by a world tragedy, been made heir to the greatest estate of opportunity that imagination ever pictured."

America is in a period which for good or ill is a turning-point in her history. To perform with credit and honor, with benefit to itself and to the world the part which the favor of Providence has allotted to this country, is a weighty and solemn task. Our duty and responsibility are as great as our opportunity. Shall we rise to its full potentiality, both in a material and in a moral sense?

The words of an English poet come to my mind:

We've sailed wherever ships can sail,  
We've founded many a mighty state,  
God grant our greatness may not stale  
Through craven fear of being great.

It is not "craven fear" that will prevent us from attaining the summit of the greatness which it is open to America to



reach, for fear has never kept back Americans—any more than Englishmen—and never will.

Indifference, slackness and sloth, lack of breadth and depth in thought and planning; the softening of our fiber through easy prosperity and luxury; unwise and hampering laws, inadequacy of vision and of purposeful, determined effort, individual and national—those are some of the things that we have to guard against.

God grant America may not fail to grasp and hold that greatness which lies at her hand!



# THOMAS WILLIAM LAMONT

## THE AMERICAN BANKERS' RESPONSIBILITY

Thomas William Lamont was born at Claverack, New York, in 1870, graduated from Harvard University in 1892 and then went to New York as a reporter on the *Tribune*. He soon transferred his interests from journalism to banking and since 1911 has been a member of the firm of J. P. Morgan & Co. During the War he rendered great service in the financial operations of the nation and was Chief Financial Adviser to our delegation at the Peace Conference. Mr. Lamont affords a notable example of the great public service performed by leaders of private corporations. In the forum for discussion of national and world affairs no voice commands more thoughtful attention than his. This address was delivered before the American Bankers' Convention held in New York City.

As Chairman of the local Reception Committee and in behalf of New York's bankers and citizens generally, I bid you welcome to this City. We want you to feel that New York City is your city—not for this Convention week alone, but for all time. For we would have you believe with us, once and for all, that New York is not local to the Atlantic seaboard, but is countrywide in its interests, in its achievements, in its attachments. There exists in this country to-day far too much in the way of sectional feeling—a feeling which if not tempered by more intimate intercourse and common experience means disunity for our country. To prevent any such unfortunate tendency is the part of all of us.

New York is not made up of a citizenship separated by some mysterious distinction from the rest of the country. On the contrary, it is composed largely of men and women from every locality in the four quarters of America. Except for its size, it might be any other great American city. Broadway is an-



other name for Main Street. Let me tell you in a word how we in New York feel. We feel that we have a share equal with you all in the life and the ambitions of our country from the Atlantic to the Pacific. We have the same satisfactions, the same pride as you in the great manufactures and the wonderful agriculture of the Mississippi Valley, in the cotton fields of the South, in the wheat prairies of the Northwest, in the rugged grandeur of the Rockies and Sierras, in the fertility, the color, the charm of the Pacific Slope. These great resources, the common inheritance of us all, which your boundless energy and capacity have developed to the benefit of the world, command our admiration and our gratitude.

In the same way do *you* all share deeply in whatever this City of New York possesses in the way of fine tradition, of character, of enterprise and accomplishment. Whatever it has builded for the stability and security of our country, you have had a share in that building. Whatever it has accomplished in the less material things of life, in music, letters and the arts, to such accomplishment, I say, you have contributed generously and in a portion that could never have been spared. Therefore it is that we would have you feel that New York belongs to the country and the country to New York. Therefore it is that we would have you return here, time after time, members with us of a closely joined family, sympathetic in understanding, close in aspiration, warm in mutual affection.

#### DOMESTIC BUSINESS CONDITIONS

Our President here has asked me to say something about American business to-day, both domestic-wise and as it is affected by conditions abroad. As to the domestic situation by itself there would appear to be little cause for conflicting views. We seem to be well into the final stage which, as the records of decades show, marks the end of one business cycle or the beginning of a new one. I hardly have to recall to you the successive stages of our business triumphs and our trials. First, was the end-of-the-war phase of huge demands for commodities of all kinds, of swiftly mounting prices, of constantly ex-



panding business and accompanying inflation. Second, came the storm signals, namely, the heavy drop in security values in the last half of 1919. Third, came the swift fall in commodity prices, not in America alone but all over the world—a fall that would have spelled disaster to American business had it not been for the sagacity and courage of you bankers here before me, backed up by the Federal Reserve System with a fine common-sense Southern banker at the head of it, Governor Harding of the Federal Reserve Board! Fourth, in this cycle, came finally the ease in money which denoted the flattening of prices with business on its back. That easing of money became marked in the summer of 1921, and now, as has been the case in other business cycles, we have, after a twelve-month of easy money, begun clearly to move forward again. We have had rude buffets and deep wounds. But American business has at last, with characteristic courage, bound up its bruises and is slowly moving on to new goals.

Yet, despite clearing skies and fair weather, we have not yet cause for unbounded confidence. We must not forget that, before the race is won, we still have some hurdles to jump. What are some of these hurdles? Our farmers would tell us that the chief one is the low price prevailing for farm products. They say, "Yes, this is a big season for crops, but our net money gain will be small." You know what the figures show, but here is the estimated comparison between our crops last year and this:

	1922	1921
Wheat .....	818,000,000 bushels	795,000,000 bushels
Corn .....	2,875,000,000 "	3,080,000,000 "
Oats .....	1,255,000,000 "	1,061,000,000 "
7 Cereals .....	5,274,000,000 "	5,195,000,000 "
Cotton .....	10,600,000 bales	8,000,000 bales

I shan't attempt to argue the point of lower prices; but I never knew any country to "go broke" because of its abundant crops. So, even though the farmers suffer disappointment, I think the low-price hurdle is the easiest one to jump. The farmers had high prices in 1919 and 1920, but the aftermath was a serious



one for them. In the long run they, like all of us, will fare better on a moderate price scale, with small fluctuations.

### THE PROBLEM OF LABOR AND CAPITAL

What other hurdles have we to leap in our race for prosperity? Certainly our labor strikes form one, and a big one at that, even though the worst may now seem to be over. We all say that we deplore these wretched struggles, yet the extent of our regret must be measured by our endeavor to prevent their recurrence; by our attempt to reconcile the conflicting views. As bearing upon this situation, I ask you, who are so influential in counselling large men of business, to remember that in this country, there are still traces of arrogance among employers, as there are manifest signs of arrogance in labor. Yet the employer has even less excuse for arrogance than the laborer. The high wages of the war and of the years just after had, not unnaturally, a somewhat "spoiling" effect upon labor. They gave labor the feeling that it must always share in the prosperity,—never in the adversity of business. I deplore that feeling; yet I beg to remind you here that that feeling of labor, in so far as it was directed to the improvement of living conditions, to the gaining of a little leisure, and to the time to play and be happy, was wholly right and to the advantage of the community. From such men as you, such ambitions on the part of labor, moderately and wisely directed, should have every possible encouragement.

The problem of capital and of labor will never be wholly worked out. People talk as if it were an example in arithmetic, capable of a final solution. It is no such thing. It is a problem of human beings: therefore, of emotions, gropings, longings and ambitions. We can meet it only little by little, and only then if we put ourselves in the other fellow's shoes and get his viewpoint. Do you and I want to change our jobs of long hours, evening conferences, heavy and continuing responsibility, for the job of the man who has the chance in his daily work to relieve his brains with the work of his hands? Some days no doubt we all feel like it; but whether we would make exchange



or would not, it is our responsibility to study more fully than we do to-day the conditions of labor and to be sure that, by and large, every competent worker (be he in the office or in the field) has an interval in the drudgery of work for that enjoyment of life that will make him a more contented and better citizen. In this matter you and I have a responsibility that we cannot dodge.

### POLITICS AND BUSINESS

What other hurdles have we to jump? If I should answer—politics—the response might well be that politics are always with us and must ever be reckoned with as a handicap upon business. If that is true, it is our own fault in the men whom we select to legislate for us. The hurdles against business which politics set up are likely to be more formidable in the continued unsettlement which they threaten than in the actual results of legislation. That is the reason that the Bonus Bill, with its threat to tax several billions of dollars more out of the American people and distribute the fund in such a way that probably no one would receive real benefit, has been a hurdle to business. That is the reason that President Harding's ringing veto of the Bill has created such a feeling of relief in the community.

The tariff measure is of a somewhat different order. We shall be fortunate indeed if we do not find that in practice it protects a lot of industries that do not require protection, and cuts off from our farmers and manufacturers a lot of foreign markets that are ready to buy our commodities. Many of our people still fail to realize that the word "trade" means, in the final analysis, an exchange of goods or services. Many of us still cling to the idea that international trade, as the term applies to America, means that we can sell freely to all the markets of the world and in turn need buy from them little or nothing. This theory, which seems to be the basis of much of our tariff legislation, will, if pursued, surely wreck a big part of our foreign trade. If there is any one motto which American producers and legislators should learn by heart, it is that



oft-repeated one of the British merchants, who, over a century ago, declared that "He who will not buy, neither shall he sell."

Now, let us cast our eyes across the ocean, and see if we can derive any comfort from that situation. With war and rumors of war, with the Turk—the "Sick Man of Europe," suddenly alive and kicking the Greeks all around the lot, with Russia, Germany and Austria what they are, with Ireland still in a ferment, we may well wonder what end is in sight. Yet to say that Europe has "gone all to pot," or in fact to give vent to broad generalizations about Europe, is very dangerous. On the surface, yes, things look about as bad as they could. But you bankers, when you are sizing up a customer, look far beyond his mere written statement. You take into consideration his character, his life-long record and many other factors not plainly visible. So in any size-up of Europe we must take into account the invisible factors. And I say to you that these invisible forces are saving Europe to-day. Politically, Europe may be in the doldrums or worse; but economically (though many people may disagree on this point) I, for one, believe that Europe is on the mend.

#### INVISIBLE FORCES SAVING EUROPE

What are these invisible forces that, I maintain, are so great as more than to offset the visible and unfortunate factors in the European situation? The first of them is productivity. Those forces that for almost five years were given over to the killing of men, are now being devoted to the growing of crops, to the making of goods. Second, trade is on the increase; not only as to Great Britain, the traditional merchant of the world, who is already well on her feet, but as to the whole continent of Europe, even including Russia. England, has, since 1919, paid off £275,000,000 of her external debt—an amount equivalent to one and one-third of America's entire national debt prior to the World War. Last year France reduced the trade balance against her from an adverse figure of 23 billion francs to 2 billion francs.

The third point is that the people of Europe are saving. The



War and its aftermath meant an orgy of spending. Now saving is taking its place. Politicians may disagree every morning upon the settlement of the reparations question, but meanwhile the brave French peasant, day by day, is growing his wheat, is saving his centimes. What, by the way, is the amount of savings that the French people have invested in their own government securities since the War? One hundred billion francs.

As to Russia, just as I was leaving London early in the summer, practical business men, familiar with Russian conditions, made this prediction to me: That there are two ways, one akin to the other, in which the Russian situation will gradually improve. One is that the Soviet Government will begin to persuade foreign engineers, manufacturers, and other technical experts to return to Russia and take in hand various units of production and transportation. The second is that foreign merchants will open up more active trade—not direct with Russia, which seems for the moment impossible—but with the buffer states like Latvia, Esthonia, etc., whose merchants (having formerly been a part of it) know Russia perfectly; and in return for shipments of goods into Russia can secure payment in kind or in some other way not open to the ordinary foreigner. One of my friends described these two processes as to Russia as akin to the isolated skin-grafting operations that are sometimes undertaken upon a bad burn on the human body. A lot of little patches of healthy skin are stuck here and there, gradually grow and after a time, with good luck, come together and cover the whole burn. I was inclined to think this a pretty good metaphor and to believe that this prophecy as to Russia was not unlikely of fulfillment, even though the time involved may be long and weary.

#### GRIEVOUS LOSS OF MAN POWER

Grievously as the Continent of Europe has suffered from the War, I would remind you that we are too apt to reckon such losses in material terms—in the destruction of dwellings, of mines and of means of production. Europe's greatest loss, one for which not only she but the whole world must suffer for gen-



erations to come, is the death of millions of her young men; vital, eager, ambitious; singers, painters, poets; men of imagination and of genius, upon whose ideas a great portion of the world depended for its future progress, for its discoveries in science, for its inspiration in the arts. Do you remember those lines of young Rupert Brooke, himself destined a little later to lay down his life in the great cause:

These laid the world away; poured out the red  
Sweet wine of youth; gave up the years to be  
Of work and joy, and that unhopèd serene  
That men call age; and those who would have been,  
Their sons, they gave, their immortality.

And Europe's great tragedy has been the loss of such lives and the upset of her social structure, the restoration of which will require far more of time and patience than the repair of the material destruction wrought upon her. It is to such spiritual repair that America can by thought, by insight and sympathy contribute even more than in material ways. And upon us bankers and business men falls the responsibility of encouraging in this country the education and inspiring of our young men to high and generous ideas. For it is our young men, trained in imagination and initiative, that, in the next decade or two, must supply to Europe some of the vitality that lies stilled forever beneath the mud of Flanders.

Remember, too, that Europe cannot be restored by formulas. No scheme can right the world. Neither statesmen, economists, nor bankers can devise a plan of salvation. Only the people can save themselves, and that through the exercise of the old-fashioned virtues of hard work, of thrift, of kindness and coöperation—coupled with wise and courageous leadership. And that is the point that leads me to emphasize the title which I have given to these scattered remarks of mine: "The American Bankers' Responsibility."

#### AMERICA'S GOOD FORTUNE

First I want to remind you of the great privilege it is to be an American citizen to-day. This is still the country of great



opportunity. The great, open spaces of this North American Continent have given us justification for boundless vision, for generous impulse, for glowing optimism, or helpful coöperation in all directions. Just to be born an American, free from some of the clinging prepossessions of the Old World, is in itself an inheritance and a career.

Are we to-day realizing our opportunities? As to our purely domestic situation, I should reply, on the whole, yes! Our people are generally working in a worthy way towards worthy ends. They are meeting most of our strictly home problems with candor and good sense. If, as a people, we have a lack, it is that not often enough do we "pause in living to enjoy life." We are sometimes apt, in our eagerness for quantity, to overlook quality. We let our days and our passing pleasures grow elaborate and complex, forgetting that moth and rust corrupt and that ideas and ideals are the only things that endure for the ages. America within itself is, I repeat, a land of generosity and coöperation. Throughout our great and growing commonwealths from East to West we see public spirit, eager and intelligent; we see warm hearts, fine impulses, directed towards noble ends. But are we bringing this native American idealism—that same idealism that has led us, in five of the six wars that our nation has waged, to battle for high principle—are we bringing that same inspiration to our relations with the world at large? That is the question that, with searching earnestness, you and I may well put to ourselves to-day.

#### INTERALLIED DEBT PROBLEM

In this connection, there is no concrete problem more vital for us to study with clear and generous vision than that of the so-called interallied indebtedness. From the purely American view there are certain points important for us to bear in mind. It has been said many times in the last twelve-month that the one adjustment essential to the settlement of Europe is the German reparations question. I agree that this has been, and is, a question of great importance, but it seems to me that it has now become secondary to the general one of interallied debts. Of



course, in a way of speaking, it is simply a part of the latter question, because Germany's indebtedness to the Allies is international in character. In our discussions of reparations over here, the American attitude has, on the whole, been critical of the French for apparently not realizing more quickly the facts of the situation and thus drastically scaling down the reparations payments. In fact, many critics over here have been advising France to forgive a good part of the German debt. To these critics Frenchmen have not unnaturally replied: "It is easy for Americans to advise us to forgive German debts due us in repair of the frightful havoc caused by Germany upon our homes and industries; but what about America, in turn, doing a little of the debt-forgiving business, especially as the debts that were contracted with the American Government were made in order to enable us, in large measure, to do America's fighting before her own soldiers got into the firing line?" I am not going to argue this point. I simply bring it up so as to ask you to give it your further thought and study—whether there may not be some reason for the French attitude.

The reason why I say that reparations has now reached a stage secondary to the larger questions of interallied indebtedness is that, while no reparations adjustment has yet been reached, nevertheless public opinion on the other side has now advanced to a state where, when the reparations question comes up again next November, it ought not to be impossible to settle. In other words, over a year ago, the British realized that the Germans could, or would, never pay anything like the reparations total fixed in the Versailles Treaty. Later the Belgian Government became similarly convinced, and now in France, as I have talked there with many classes of representative Frenchmen, there has come to be the same recognition of the fact that Germany cannot pay the huge totals set forth. The French Government, however, has, not unnaturally, taken the position that it could make no official acknowledgment of such a general fact until such time as a possible settlement was offered. The French thesis is that if Germany cannot pay what she has promised to pay, let her come forward and state just why she cannot, and what and when she can pay. Up to date the French declare they have not received any clear-cut proposi-



tion from Germany covering these points. They say that when they receive such a proposition, they will be prepared to act. I bring out this point of view, because I feel that while to many there may have appeared to be something "hard-boiled" in the French attitude, it is only fair to analyze that attitude and see what it really is.

Further, when it comes to this question of interallied indebtedness, suppose we put to ourselves, in all seriousness, that point that the French have put to us, namely—"is it fair for us, inasmuch as we seem to be urging France to forgive part of the German debt in order to effect economic adjustments in Europe, to do a little forgiving ourselves?" As we put this point to ourselves, suppose we spend a moment in looking at the amounts of governmental indebtedness owing to our Government. Just for record, I will mention again the rough totals by countries:

Armenia .....	\$11,959,917
Austria .....	24,055,708
Belgium .....	377,564,298
Cuba .....	8,147,000
Czecho-Slovakia .....	91,169,834
Esthonia .....	13,999,145
Finland .....	8,281,926
France .....	3,358,104,093
Great Britain .....	4,166,318,358
Greece .....	15,000,000
Hungary .....	1,685,836
Italy .....	1,648,034,050
Latvia .....	5,132,287
Liberia .....	26,000
Lithuania .....	4,981,628
Nicaragua .....	170,585
Poland .....	135,620,583
Roumania .....	36,128,494
Russia .....	192,601,297
Serbia .....	51,153,160
<hr/>	
Total .....	\$10,150,154,196

Now as to this indebtedness, early last spring, Congress passed a law under which the President appointed a special



commission to negotiate with the foreign nations the handling of their indebtedness. The power of this commission, however, was strictly limited by law. It must require the borrowing nations to pay off their entire indebtedness within twenty-five years and meantime to pay interest at an average rate not below  $4\frac{1}{4}$  per cent. Of course, such provisions leave little room for negotiation. Under that bill about all that the European nations can do is to "sign on the dotted line," or else to decline to sign, on the ground that they know that they will not be able to live up to the specified obligation and, therefore, feel it impossible to commit themselves to a promise that they cannot carry out.

Now, being all, I hope, practical men, I think it behooves us to scrutinize this situation and to look into the various factors bearing upon it. Let us, by investigation, determine what, if any, of these debts are in any event uncollectable, and so should be written off in order to "quit fooling ourselves." Let us decide what others of these debtors are good in part but must be given ample time to pay in—far longer perhaps than twenty-five years. Emphatically, let us figure to see whether the payment of these debts (which inevitably must mean a great increase in our import and a heavy decrease in our export trade) is going to prove an asset or a liability for American business.

#### SHOULD THE DEBT FALL INTO TWO CATEGORIES?

I have never been in favor of wholesale cancellation of the allied indebtedness, nor am I to-day. But there is one phase of the whole question, worthy of study, which has practicality in it and also some sentiment. It is based on the following fact, namely, that about one-half of the total indebtedness shown in the foregoing table was contracted between April 4th, 1917 (when Congress declared war against Germany), and the date a year later when the American army for the first time got its soldiers into the trenches in any considerable numbers. Can it not, with much reason, be argued that whereas during this period of one year, we were wholly unable to furnish soldiers to fight our battles for us, at least we were able to furnish arms



and munitions? We did furnish these, but not as a free contribution to the War, for during that period the Allies were purchasing these commodities in America and were paying for them by contracting the debts just described. Ought, therefore, any part of this first half of the debt to be cancelled by the American taxpayers? I do not attempt to answer that question, which of course has been raised many times heretofore. I simply bring it up again and urge you to think about it, and if, when, you reach a conclusion, express that conclusion out loud. One thing is certain: if someone on April 4th, 1917, had been able to give us our choice as to whether we should rather give up freely and for all time five billion dollars in money or give up the lives of several hundred thousands of our sons, there would have been no hesitation as to our choice. Fate, however, was the one that determined that choice. It determined that Great Britain and France should give up their lives during that first year, and that we should furnish, not our blood but our money; taking, however, in place of it the promises-to-pay of our Allies. No other policy at the time could have been followed, I grant you, but now that the War is behind us and we can take a long look back, is it wise for us, is it just, is it generous to make some composition of this matter? What is your opinion?

In making up our minds as to the proper answer, let us recall a phrase that of late years has been much used here, and sometimes misused—"America First." What does America First mean? Does it mean that we shall strain every nerve to make America first in wealth and prosperity? If so, we have already attained that ambition. Already we hold two-fifths the entire world's stock of gold. We produce 54 per cent of its cotton; 45 per cent of its grain; 60 per cent of its copper; more than half of its iron and steel. Is there any field of material accomplishment that we are not preëminent in?

As to science, no ambition could be more exalted than to have America first in that field. And we may well be glad and proud that in so many lines of science, especially perhaps medicine and pathology, this country is in the van; its progress being manifestly due not only to the zeal and skill of our scientists, but also to the boundless generosity of those men



who have used their wealth to relieve and to bless mankind.

In education, too, America is in the front rank, and even though in systems for training minds of our young we may have much to learn, yet no one can deny that in our scheme of general, free schools for the youth of the land we probably surpass any other country in the world. Likewise, in our charity, America's record is a noble one. Who can forget the colossal sums for relief that our people freely gave, during the War and after? Mr. Herbert Hoover estimates these sums to have aggregated \$1,204,343,000 down to the summer of 1921. Of this amount approximately \$200,000,000 was sent abroad after the Armistice to feed the hungry and clothe the naked.

### ARE WE DOING OUR FULL SHARE?

Yet with all this splendid record of liberality and accomplishment, I again put the question whether you and I and our fellow citizens generally are doing our full share to solve the weighty, the tragic questions that are weighing upon the world? Are we giving to the solution of those questions the best that is in us—our constant study and thought, the willingness to sacrifice? I make no appeal to you for the immediate material aid of the world that lies beyond the Atlantic and Pacific. I make appeal to you, and to myself, for something far more rare—for our assurance to them that we are with them in mind and in spirit in the solution of their difficulties; that we are once again ready, as we were in the Great War and as our forefathers have been for 150 years, to suffer if need be, and to yield up something of ourselves in the general cause of world justice and peace.

Concretely, may I digress for a moment to mention two situations with which in the past two years I have become somewhat familiar? One of these is the Far East. The other is Mexico. Across the Pacific, Japan is our nearest neighbor. Do not gain the opinion that the Japanese people are a sharp, tricky nation, unfriendly to us and wanting to get the advantage of us. It is not so. The Japanese nation as a whole is exceedingly anxious for our good will and friendliness and



will go far to gain and retain our coöperation. Nothing, I believe to-day, is, in their opinion, quite so vital to them as an unbroken friendship with their neighbors of America. But it was upon the transcendent problem of China that I particularly wanted your thought. There is a great people—four hundred millions of them—a people high in the arts and in civilization three thousand years before Columbus came to America. But in these modern days their antiquated system of government has broken down. And trusting America, these great people of China—sober, peaceful, honest, industrious and intelligent—ardently desire the guidance of America. Any question affecting the peace and development of the whole Pacific basin must be of interest to us, and no task of greater magnitude and import waits upon us than to assist in the solution of China's difficulties. That is why I regard the Pacific Four-Power Treaty reached at Washington last winter as of such supreme importance to the Far East and as calling for the study and loyal support of every American citizen.

#### As to Mexico

The other concrete situation which I had in mind was nearer at hand; our next neighbor to the south. To Mexico, as to China and Japan, duties not of my own seeking called me not long ago, and much time has been spent in an endeavor to assist Mexico in what I believe to be a sincere attempt by her present Administration to work out the problem of her foreign indebtedness. Any such attempt, if carried out in good faith and effectiveness by the Mexican Government, must be bound to impress the world. And what I ask of you now is to give some little thought to this near neighbor of ours. Do not accept the "hard-boiled" opinion of your neighbor that "Mexico is hopeless" or that "All the Mexican people care about is to fight revolutions." No such opinion is true. No such opinion shows any scrutiny of the facts. Study the situation for yourself and you will find this to be true: That during the administration of Porfirio Diaz, intelligent and high minded as he was in so many ways, millions of the Mexican people had



almost no opportunity to improve their position either by acquiring education or by becoming, even in part, owners of the land which they cultivated. So that the revolution which overthrew Diaz and the revolutionary movements that succeeded it—misdirected though some of them were—were, in general, efforts to relieve and uplift the great mass of Mexican people. Remember this and you cannot fail to have more sympathy with the situation to-day. Of course, the movement to reform, like all such movements in history, went too far. The pendulum swung away to the left. Trying to correct admitted evils the Republic created some new ones and adopted a constitution which is subject to criticism, not so much on the ground of its radicalism, as upon its unworkableness. The present Administration in Mexico is, I believe, making an earnest effort to change the workings of that 1917 Constitution so as to give the country a sound basis to work upon and its foreign investors adequate security. Because, however, the process is slow and halting, we have no cause for despair. On the contrary, there is strong ground for hope, always provided that you intelligent leaders of our community take the trouble to study facts, and never be wearied in your patience and sympathy for that neighbor whose frontier marches for sixteen hundred miles with ours from the Gulf of Mexico to the Pacific.

To the problems then of these two neighbors of ours to the south and across the Pacific, I ask you to give your personal thought and interest; pointing out to you meantime that the situation of Europe is inescapably joined with that of our own. In a material way we have made many nations, as Mr. Wickersham has said, dependent upon our own surplus products, and ourselves, in turn, dependent in part upon their markets. But, as I have said, the coöperation that I ask first for them is not economic. It lies in understanding and sympathy. The shot that was fired at Lexington in 1775 was heard around the world. At that moment America set aglow a new beacon to light the way to freedom and liberty for the generations on both sides of the Ocean. But now that we have won so far on the way to a splendid national achievement, to well-ordered freedom, to prosperity and contentment, have we no flaming torch of leadership that we can raise before the eyes of the



many millions who, since the Armistice, have been looking in vain for it?

#### AMERICA AT THE PARTING OF THE WAYS

Finally, do not forget that, as these nations of Europe face great dangers, America too is facing a crisis, though of a different order. We have gained great power. With the power goes weighty responsibility. Have we discharged it? For the period of the World War, my answer is yes, a thousandfold yes. For the period since the Armistice, can any one of us search his heart and answer, yes? We have, it is true, offered criticism to the nations of Europe. We have shouted advice across to them. But we have been timid and fearful of petty entanglement. Now we have, it would seem, come to the parting of the ways. Shall we meet the responsibility that has come with our power—or shall we fail? Shall you and I give our mind, our understanding and our sympathy to these problems or shall we stand aside and add to our national stock of gold? Shall we urge upon our National Government active co-operation in the counsels of the Mother Country, and of the Old World? Or shall we keep silent?

Nineteen hundred years ago there was One who said: "For unto whomsoever much is given, of him shall be much required." And again a little later: "With what measure ye mete, it shall be measured to you again." What shall we measure for ourselves? Shall it not once more be the courage that is America's tradition? Shall it not be the generosity as well as the justice that, among all the nations of the earth, will in truth and in name make America First?



# MARTIN WILIE LITTLETON

## DIRECT DEMOCRACY

Martin Wilie Littleton was born in Roane County, Tennessee, in 1872 and has practiced law since he was nineteen. He is one of our most eloquent speakers, whether at the bar or before a public audience. The following address was given at the dinner of the Fifth Avenue Association at the Waldorf-Astoria, New York.

THE progress of direct democracy has brought us face to face with a new and portentous proposal. Shall the Congress of the United States be vested with the authority by constitutional amendment to overrule a decision of the Supreme Court holding an Act of Congress unconstitutional?

The National Security League, by a careful canvass of the candidates for Congress in the last election, found that fifty-four in number subscribed to this proposal. The exact number that were successful has not been announced. This is enough to indicate the strictly political drift in that direction, and in and of itself would not inspire hope in the proponents or cause alarm in their adversaries. But there are other currents coursing their way through the thought and feeling of the country which attest the insensible drift in that direction.

The Socialist, arising from his safe submergence under the cover of an almost universal patriotism, is undisguised again and through speech and writing is diligently digging away at the very foundations of the Republic. The returning and reckless red, with the abandon of his creed and crowd, revives his anarchistic attack upon all governments. The not too occasional professor patters his puerile pacifism and his bewildering "brotherhood of man." The honest humanitarian, overcome with misdirected emotion and swamped with his own self-





MARTIN W. LITTLETON







expansion, blindly embraces all creeds and convictions. Some of the preposterously rich, in constrained condescension to their less fortunate but much happier brother in poverty, patronizingly plead for industrial and social democracy. Parlor prigs, affecting a profound attack of sociological thinking and lost in the empty thunder of phrases which they do not understand, disdain their traditions and defend the new order of things. The proverbially unorthodox, intent on being different even if not intelligent, earn their place at the pinnacle of independence by taking to their bosoms the last squalid doctrine of dissolution. The purely political preacher, long since detached from the grace which saves and the faith which holds on, rejects the Scriptures as a guide to Heaven and the Constitution as a guide on earth and disports himself in a righteousness and liberty all his own. The sincere toiler, tied to his task by day, turns at night with trustful eye and ear to the seducing syndicalist, who promises him leisure and content in a land of disorder and decay. The depressed farmer, deflated in what he sells and inflated in what he buys, is sung to sleep by the siren demagogue who pledges to him a restoration of the rule of the common people. The crafty and conventional candidate of the two old parties, fearful lest he offend and frantic lest he lose, cunningly courts with covert approval or open avowal all phases and factions, all cults and creeds, until, when elected, he is the cringing delegate of the groups instead of a resolute representative of them all.

Behind and back of it all is a monarch without a throne, a king without a crown, a czar without a court—the great majority. This is the perfected creation of universal suffrage, this is the unimpeachable oracle, this is the great philosopher in whose numerical strength lies the golden experience of the ages. This is the sapient ruler in the count of whose numberless noses is found the tested wisdom of all time. It is this canonized majority which must rule, not merely in the choice of public servants—for that is and was its real and original intention—but it must rule on all those fine-wrought principles which came through the travail of the ages. Its political edict, issued from a bosom flaming with impulse, must take the place of those seasoned principles which finally



arose on the ruin of a thousand years of failure. Its tempestuous passion, pulsating through its shivering delegates, must supplant the stability of institutions for which whole generations died on the field of battle. Its capricious and restless spirit, interpreted by its apologetic courtiers, must abide where once abode the solemn and majestic spirit of sacrifice and lofty self-restraint.

Thus direct democracy must triumph. "Life, liberty and property"—these beloved words of our plain and patient old fathers, signifying that inaccessible region of happiness to secure which all just governments are dedicated, are now to be swept by the gusts of popular wrath or smitten by the lightning of popular hate. These, the priceless purchase of ancestral sacrifice, the consummate wisdom of unterrified leadership, these shall yield to the blind decree of a mad majority. These three and only reasons for living at all, the three great lights set by our fathers to guide our feet along the dangerous highways of government, shall be blown out by the breath of a panting crowd, who do not know that after that there shall be darkness forever. And how? By taking from the center of our capital the authority of a nice-cloistered, detached and devoted body of jurists, rich in learning, aloof from party or passion, to uphold the supreme law which this same people made. By substituting the occasional outburst of the majority for the calm and cultivated will of the people; by stripping the greatest court in all the annals of Law of the power to uphold the solemn and carefully ascertained will of the people; by reversing in an hour of agony, or anger or rage what was achieved in one hundred and forty years of intelligent sacrifice and self-denial.

The Constitution of the United States is the final will of the people, expressed in orderly form. It is not the enemy of the people but the direct product of the people. It is not some alien agency with which the people must always be at war but it is that secure shelter to which each—the highest and the lowest—must repair to repel an invasion of his right to life, to liberty and to the pursuit of happiness. Who shall decide when that Constitution has been violated? This is the question. Shall it be a group of temporary delegates,



holding a commission issued by temporary public opinion, whimsically changing from year to year and from election to election, or shall it be decided by a body of jurists selected for their learning, chosen for their uprightness, responsible in their tenure of office to no party and no crowd, learned in those precedents and rules which survive the tumult of all times?

Direct democracy has had altogether too many triumphs in a representative republic. If it shall succeed in this last proposal, then will we have descended to the absolutism of the crowd.



## HENRY CABOT LODGE

### PARTY HARMONY AND POLITICAL FRIENDSHIP

Henry Cabot Lodge, United States senator from Massachusetts from 1893 to 1924, was born in Boston, Mass., May 12, 1850. He graduated from Harvard College in 1871, and from the Harvard Law School in 1875. He was for three years instructor in history at Harvard and then proceeded, through the State and National House of Representatives, to the Senate. He was for many years the leader of the Republicans in the Senate and one of the chief opponents of President Wilson. He was the author of numerous books and papers on historical subjects. He died in 1924. The following speech was delivered before the Massachusetts Republican Convention.

NOW, MR. PRESIDENT, during all that period we have had the power and the conditions I have described. There have been no conflicts in the delegation at Washington. There has been no strife between senators, there has been none between representatives, and there has been none between senators and representatives. We have always presented there in all these years the agreeable spectacle of a delegation from the State of Massachusetts absolutely united in the interests of the State. We have differed occasionally, as men must differ; but we have never had a single quarrel, we have had no miserable squabbles over patronage. We have had no factional fights. I had at one time the misfortune to differ widely with my colleague [Mr. Hoar] on a great question of international policy. It never cast the slightest shade upon our friendship or upon our confidence in each other. One of the acts of my life to which I look back with the greatest pleasure—probably forgotten by almost everybody except myself—was that at that time when the party undoubtedly by a great majority stood with the Administration and with the views which I advocated, I had the





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pleasure to stand upon this platform and say to the assembled Republicans of Massachusetts that they ought to return to the Senate without a dissenting voice their great Senator, George F. Hoar. It is that spirit which has been the spirit of Massachusetts. I think it is a spirit to which it is worth while to make some sacrifices. I should like to have party harmony, as we are going to have it to-day, because I believe it is not a mere form of words, but a permanent advantage and a lasting principle.

Now, Mr. President, I have advocated the adoption of this platform on the ground of party harmony. But I will not disguise from you or from this convention that I have also been influenced in the attitude which I have taken by a motive which I think you will all appreciate and approve. I have been influenced by the motive of friendship. Mr. President, as we grow older and the shades begin to lengthen and the leaves which seemed so thick in youth above our head grow thin and show the sky beyond; as those in the ranks in front drop away and we come in sight, as we all must, of the eternal rifle-pits beyond, a man begins to feel that, among the really precious things of life, more lasting and more substantial than many or all of the objects of ambition here, is the love of those whom he loves and the friendships of those whose friendship he prizes.

I have been long associated in politics and in all the ways of friendship with my colleague in the Senate. He has been a very good friend to me. He has been a wise, sagacious governor of this Commonwealth. He has been an upright, a loyal, a devoted Republican. I for one want to do everything I can to make his path smooth and to do what he desires. He would never ask any man to sacrifice a principle to him. But I think he has not only earned the honors which he holds at your hands, but that he has earned your confidence, your respect and your consideration [turning to Senator Crane, who sat upon the platform]. I wanted to say this much on this particular occasion because the figure which Shakespeare introduces as a prologue to an act—"Rumor painted full of tongues"—has held the entire stage of Massachusetts politics for these many weeks. I wanted to clear away if I could by my single voice—and I know it is rather a wild hope—I wanted to clear



away some of these suspicions, doubts and misapprehensions with which our political atmosphere has been charged.

Mr. President, there is another friend whose fortunes concerned me very nearly when I was called upon to consider what should be done at this time. The acting governor of the Commonwealth [turning to Mr. Draper, who sat upon the platform] is a friend for whom I have a great regard, a great affection, which I trust and believe is returned. He is my friend, faithful and just to me. I want him elected next November, not merely because it is a party victory, although I desire that as much as any man. I want him elected not merely because I think Republican success essential to the best interests of the Commonwealth, not merely because he is my friend, deep as that feeling is, but I want him elected because he is what he is—a brave, courageous, high-minded man, who can look defeat in the face and watch departing votes with a smile, rather than sacrifice a principle to avoid the one or retain the other. If there is any possible obstacle that I can help to take away from his onward course, I want to do it. If there is a straw upon his path, I should like to brush it away.

One other friend I want to speak of and then I will ask you to pardon me for having trespassed so long upon your attention. He is not a friend whose personal fortunes are concerned in what we do here this morning. But that which he holds much dearer than his own personal fortunes, the policies, to the establishment of which he has given all that is best in him, are in a great measure at stake here to-day. He is my friend of many years, my close friend, my companion. I believe in him. A high destiny has called him to the greatest place in the republic, one of the greatest places on earth. He goes out of it solely by his own compulsion in less than a year, but he leaves his policies behind him. I have differed with him sometimes, I have had to vote against him sometimes. He is too high-minded, too large-minded a man to object to a difference of opinion. He would not like a servile subservience. He had rather have a friend who speaks out honestly, even if he differs. He was charged when he came into power with being such a combative man that he was sure to involve the country in war; and he has been the greatest peacemaker of his



time. It was he who brought about peace between Russia and Japan. It was he who used his great influence for a peaceful solution of the questions of Algeciras, which were at one time threatening to the peace of the whole world. It is he and his great Secretary of State, Mr. Root, who have promoted peace throughout South America. It is he who has done more to press forward the work of The Hague than any other man. It is he, more than any other man, who has built up a navy which is now the second in the world and which in its long voyage has come to itself for the first time as a great fleet. That fleet and that voyage were great contributions to the peace of the United States and of the world.

But the President's greatest work is the work he has done here at home. He found a situation confronting him where the American people were stirred with indignation at wrongs which they believed to exist and they did not know how those wrongs could be reached. The great mass of the conservative, law-abiding citizens, neither the very rich nor the very poor men, who constitute the strength of the republic, who are the backbone of the Republican party, were looking about in alarm lest something should not be done to cure the evils and the corruptions which menaced us. If the President had paused, if he had not gone forward, that great body of American citizens would have been forced into the arms of the violent and of the revolutionary. But it is he who satisfied them that the work would be done, that wrong should not be permitted to exist. He has given them what they wanted. He has stood between the radicals of reaction and the radicals of revolution; and he has carried behind him the great mass of the American people.

After a time, when men look back on this period and write its history, they will see that what we have had done for us was the work of a great constructive statesman; that the President has laid out a series of measures which, in substance, this country has adopted, or will adopt to solve the problems which modern economic conditions have crowded upon us. And the people have followed him. The millions of dollars may be against him, but the millions of votes are with him. He is the best abused and the most popular man in the United States.



He has been abused more than any President who ever sat in the White House, except Grant, Lincoln and Washington; and he has a popularity to-day and the confidence of the American people to a degree never equaled by any President except Washington and Lincoln. The people understand. His enemies, however, have been powerful, if few. They have been vocal, if they have not been numerous, and they have left nothing undone to compass his defeat.

Why has that abuse been showered upon him? Read his messages, which many of those who condemn him fail to do, and you will find that the basic principles for which he stands are the principles upon which the American republic must stand, if it is to stand at all—principles that no man can successfully confute or deny. But he set himself to the task of rooting up certain evils strongly fastened in the soil and when they were torn out they shrieked like the fabled mandrake when it was pulled from the earth. Those who profited by the evils and abuses did not like it, and thence have come the ferocious attacks upon him. Fault has been found with the violence of his expressions. His language has been considered at times too strong. You cannot call men to a fire in a whisper. When the pioneer breaks into the jungle and the forest he has to use the broadax in order to clear the great trees from his path. The pruning knife and the clipping shears are all very well in the ordered growth of a hundred years or of many centuries of care under the hand of man. They are useless to the pioneer, who is breaking his way into the virgin forest. The man who was breaking into a system that had unconsciously grown up in our business world had to use strong language. It has been said that revolutions are not made with rosewater and if you are going to force a great reform through against those who are intrenched against it, you cannot force it through with rosewater.

Mr. President, those policies which Theodore Roosevelt will bequeath to us on the fourth of March next the Republican party alone can take up and carry forward to completion. There is not sanity enough in the Democratic party to do it, because when they nominate sane candidates they desert them, and when they select the "insane and unsafe" the voters fly



from them. It is for us to follow the path which the President has marked out between the radicals of reaction on the one side and the radicals of revolution on the other. There is only one Republican who can be nominated at Chicago who can be defeated; and that is a Republican whose nomination would be hailed as a defeat of Theodore Roosevelt and his policies. There is only one way in which a Republican candidate can be defeated, and that is by factional fights among ourselves. I want Massachusetts to-day to set the example of harmony and union so that she can make her opinion felt, and I would have her do it without wrong to any one or mortification to any one, or hurt to any one. I would have her say to all her sister States: "There must be no factional fights among Republicans. The party must be united and harmonious, true to the traditions of the past and united on the principles of the present Administration." When we are thus united and harmonious the victory is always with us. The Republican party is never beaten when its members march in unison. In the interest of a wise progress, in the interest of the maintenance of those policies which we all have, there never was a time when party union was more necessary.

There is no man in this country who believes more thoroughly than I do in Theodore Roosevelt and his policies. I would cut off my hand sooner than do anything to injure him. No one who knows me can doubt the sincerity or earnestness of my declared preference among presidential candidates. You may believe, therefore, that when I urge upon you this union of hearts and union of hands in the work which is coming to us I do it as an ardent friend and supporter of the present Administration.

I am sure that when I speak as I do, when I urge you to accept the solution reached by the resolutions committee, I am speaking not only in the interests of our party here but also in the interests of the larger party, covering every State; not only in the interests of those friends of mine whom I have named to you and to whom I would render every service in my power, but I am speaking, I believe, in the interests of that great party of the nation in whose hands alone I firmly believe the future of that nation is safely to be trusted.



# JOHN LOWELL

## HUMORS OF THE BENCH

Speech of Judge John Lowell at a banquet given by the Boston Merchants' Association in Boston, in his honor, upon his retirement from the bench of the United States Circuit Court.

GENTLEMEN:—I hardly know why I am here. I suppose I must have decided some case in favor of our honored chairman. But, then, if every one in whose favor I have decided a case should give me a dinner I should have some thousands to eat, if I could live long enough.

I observe that in your invitation to me you say very little, if anything, about any judicial qualities which I may have displayed in office, but you do mention my courtesy and patience. You are right. There are better judges here to-night than I ever was; but in courtesy and consideration, which I learned at my mother's knee, I hope I have not been surpassed. I have received several compliments of the same kind. I will tell you one story about that.

I was sitting one day up in court. The jury had just gone out, when a very nice-looking young man came up. His hair was a little short, I believe, but I didn't notice it particularly. Said he, "Good-morning, Judge." "Good-morning." "You don't remember me?" he said. "Your countenance is familiar to me," I said, "but it does not impress itself on my memory." Said he: "Four years ago to-day you sentenced me to four years' imprisonment in the State prison." I suppose it ought to have been five, I don't know. He said: "I got out to-day, and I thought I would make my first call on you." [Laughter. A voice: "That was his courtesy."] True; and mine then came in. Said I: "Many happy returns of the day." [Great laughter and applause.] He took it very kindly and went off. I haven't seen him since.



I might have resigned some time ago. I was waiting to be turned out. [Laughter.] I got tired of waiting. I will tell you how that is now. My great-grandfather was judge of the District Court, appointed by Washington; then he was made circuit judge by Adams. Well, Adams made a good many circuit judges, and they were all Federalists; and when the Democrats—they called themselves Republicans—all the same, you know [laughter]—when the Republicans came in they abolished the court to get rid of the judges. They made a circuit court here about nineteen years ago, and they appointed my friend Shepley the first judge. I told him if the Democrats only got in soon enough he would go the way of my grandfather. He admitted it. When I was appointed I expected the same thing. In fact, some of our prominent Democrats told me so. I said, "All right, bring on your bear. Bring on your Democratic President." So I waited for that Democratic President about eight years. I got tired of waiting. That is the only reason I resign now. [Laughter and applause.]

You take things so good-naturedly I will tell you one or two more stories. One of the principal difficulties we have is in serving on the jury. The members of the Merchants' Association always presented me with a certificate showing that they were members of the Ancient and Honorable Artillery Company.<sup>1</sup> [Laughter.] But a man who was not a house guard came into my private office one day just as the jury was about to be impaneled. Said he: "Judge, I hear you live out of town." Said I: "Yes." Said he: "I guess you burn kerosene. You don't have electric lights or anything of that kind? Well," said he, "if you will let me off this jury I will give you the darndest nice can of kerosene ever you see." Said I: "Young man, I see in your mind the exact virtues which would be most useful—a justice and probity which will make you serve the country most admirably as a jurymen." So he served. I don't know but that if it had been a barrel it might have been different. [Great laughter.]

Another tried the intimidation dodge. He says: "Judge, I have been exposed to the small-pox, and expect it to break out

<sup>1</sup>Members of this organization are exempted from jury service.



every minute." Said I: "Break!" [Laughter.] He broke into the jury box and served his country well, and had no incapacitating disease that I ever heard of.

I don't know that there is much of anything else, except that I would give some advice. I am going to draw up some rules for my successor, and the first one will be: "Always decide in favor of the Merchants' Association." When there are two Merchants' Associations together, in different interests, then you must do like that jury in Kennebec County. There was a jury there which was very prompt and satisfactory. When they got through, the judge said: "Gentlemen, I thank you very much for the very satisfactory character of your verdicts, for the great promptness with which they have been rendered, without a single disagreement." The foreman returned thanks for the compliment, and said that the jury had escaped the delays and disagreements to which his Honor had referred, by always tossing up a copper as soon as they had retired, and abiding by the result of the throw.

One word in a more serious vein. I wish to express, in closing, my profound gratification that my efforts to do my duty simply and industriously should have met with your approval, and my gratitude for its public and spontaneous expression, [Applause.]



# JULIUS M. MAYER

## THE COURT AND THE LAW

Julius M. Mayer was born in New York in 1865 and died in 1925. He was judge of the District Court, Southern District of New York, from 1912 to 1921, and United States circuit judge from 1921 until his death. The following charge was delivered in the Federal Court in New York City on October 30, 1918, by the judge imposing sentence on Roger N. Baldwin. It is reprinted here as an admirable example of a judicial charge and also as a significant exposition of the relation of the law to the individual. Mr. Roger N. Baldwin, a distinguished radical, appeared before the court as a violator of the Draft Act. He presented his case in a notable speech ending in the following paragraphs:

"I ask the Court for no favor. I could do no other than what I have done, whatever the court's decree. I have no bitterness or hate in my heart for any man. Whatever the penalty I shall endure it, firm in the faith, that whatever befalls me, the principles in which I believe will bring forth out of this misery and chaos, a world of brotherhood, harmony and freedom for each to live the truth as he sees it.

"I hope your Honor will not think that I have taken this occasion to make a speech for the sake of making a speech. I have read you what I have written in order that the future record for myself and for my friends may be perfectly clear, and in order to clear up some of the matters to which the District Attorney called your attention. I know that it is pretty nigh hopeless in times of war and hysteria to get across to any substantial body of people, the view of an out and out heretic like myself. I know that as far as my principles are concerned, they seem to be utterly impractical—mere moonshine. They are not the views that work in the world to-day. I fully realize that. But I fully believe that they are the views which are going to guide in the future.

"Having arrived at the state of mind in which those views mean the dearest things in life to me, I cannot consistently, with self-respect, do other than I have, namely, to deliberately violate an act which seems to me to be a denial of everything which ideally and in practice I hold sacred."



I HAVE not any question at all in my mind that the position which you have announced as being held by you, is honestly and conscientiously held.

In one regard, out of a considerable number of cases that are of similar character, you do stand out in that you have retained your self-respect, because you state to the Court your position without quibble, and you don't seek to avoid the consequences of that position, as some others who have been much louder in words, have done, by taking the chance of a trial and the possibility of escaping through either some technicality of the law or through some inability of a jury to decide appropriately on the facts.

And therefore I want you to distinctly understand, as I think you will, with your ability and intelligence, that I deal with the disposition of your case entirely from the standpoint of the law. And although our individual views are not considered as a matter of import, it may or may not be some satisfaction to know, that while your views are exactly opposite to those that I entertain, I cannot help but contrast in my mind your self-respecting and manly position in stating views which to my mind are intolerable, but which are so stated so as at least to put your case in a somewhat different position from that of others to which I referred.

Now it may be impossible for me to convey to your mind successfully the point of view which I think is entertained by the great masses of the people, and which must be entertained by the courts and by those, such as the Department of Justice, who are charged with the administration of the law.

In all that you have said, I think that you have lost sight of one very fundamental and essential thing for the preservation of that American liberty of which by tradition you feel that you are a genuine upholder. A republic can last only so long as its laws are obeyed. The freest discussion is permitted, and should be invited in the processes that lead up to the enactment of a statute. There should be the freest opportunity of discussion as to the methods of the administration of the statutes. But the republic must cease to exist if disobedience to any law enacted by the orderly process laid down by the constitution is in the slightest degree permitted. That is,



from my point of view, fundamental. That is the sense, not only from an ideal standpoint, but from a practical standpoint. We should not be able, as I think most Americans believe, to maintain what we regard as a Government of free people, if some individual, whether from good or bad motives, were able successfully to violate a statute, duly and constitutionally and properly passed, because his own view of the same might differ from that entertained by the law makers who have enacted the law, and from that of the executive who has given it his approval.

Now that is my point of view, based upon a system whose perpetuity rests upon obedience of the law.

It may often be that a man or woman has greater foresight than the masses of the people. And it may be that in the history of things, he, who seems to be wrong to-day, may be right to-morrow. But with those possible idealistic and academic speculations a court has nothing to do.

I don't take into consideration any of the details of the organization with which you were connected. I cannot and will not endeavor to arrive at any conclusions as to whether its activities were good, bad, or indifferent. If it should come before the Court sometime, why then, the Court, however composed, will deal with the subject matter as the evidence may justify. I am concerned only with your perfectly definite, frank statement that you decline to take a step which the law provides. I am directing my mind solely to the indictment to which you plead guilty. You are entirely right. There can be no compromise. There can be neither compromise by you as the defendant, as you say, because you don't wish to compromise. Nor can there be compromise by the Court, which, for the moment, represents organized society as we understand it in this Republic. He who disobeys the law, knowing that he does so, with the intelligence that you possess, must, as you are prepared to—take the consequences.

When at times there have been brought in here, ignorant men—men of low intelligence—men who have lacked opportunity of education and cannot see things clearly—the Court, by whatever Judge may be sitting, has seen its way clear to make the punishment light, where theoretically under the stat-



utes it might be made severe. You have made my task this morning an entirely easy one. I have no difficulty in concluding how your case will be treated, because at the moment you represent one extreme of thought, and in my capacity at the moment, I represent another. I cannot emphasize too strongly that in my view, not only could this war not have been successfully and in a self-respecting way carried on by the United States Government if such an attitude as yours had prevailed, but I think such an attitude would have led inevitably to disorder and finally to the destruction of a Government, which with all of the imperfections that may attach to human government, has proved itself, as I view it, to be a real people's Government, as evidenced by the millions upon millions of men who voluntarily obey the laws—and some of them requiring great sacrifice—which, as enacted by the legislature, embody the judgment of the people at large.

Now in such circumstances, you representing the utterly contrary view, you representing—although possibly not meaningly—a position which in my judgment if carried out would mean the subversion of all the principles dear to the American people, and the ultimate destruction of the Republic, there is nothing left for me to do except to impose the full penalty of the statute. It would be obviously most unwise to permit you to go into the army now, and there become a disturbing element and cause the military authorities only an increase to the many great and difficult problems with which they are now dealing. The case is one, from the standpoint of penalty to be imposed, no different from that which has been imposed in many similar cases. The maximum penalty, as I understand it, is one year in the penitentiary. You have already spent twenty days in imprisonment. You ask for no compromise. You will get no compromise. You are sentenced to the penitentiary for eleven months and ten days.



# ANDREW WILLIAM MELLON

## THE NATION'S BUSINESS

Andrew W. Mellon, Secretary of the Treasury, was born in Pittsburgh, Pa., in 1854, was long associated with Henry C. Frick in the development of coal and iron enterprises and became an officer and director in many financial and industrial corporations. He became Secretary of the Treasury in 1921 and has met with signal success the many problems arising in the after-war period. The following address was made on the occasion of a complimentary dinner tendered Mr. Mellon by the Lotos Club on February 6, 1926. President Nicholas Murray Butler presided and concluded his speech of introduction as follows:

"If intelligence, probity, and character can do that, then Mr. Secretary Mellon has rendered another public service not written in the books; he has offered us an ideal and a model for the ambition of the young men who are to come after him. So, gentlemen, in your presence and in that of our company of guests, I hail and salute this quiet American gentleman who turns neither to the right nor to the left when the public interest is to be served, or when a public duty calls, who does his great service week in and week out, month in and month out, year in and year out, with no concern for the unfriendliness, the malice, or the evil-mindedness that may come and go, but who asks only the reward of a clear conscience and the plaudits of right-minded and unselfish men.

"Gentlemen, I present to you our distinguished guest, the Secretary of the Treasury, Mr. Andrew W. Mellon." [Extended applause amidst cheering.]

MR. PRESIDENT AND GENTLEMEN OF THE LOTOS CLUB: The cordial invitation which I received for this occasion was made doubly cordial in that I was informed I would not have occasion to make a speech. [Laughter.] Therefore, I have come with a clear conscience, notwithstanding the fact that I am afraid I shall be unable to rise to the occasion as measured by



your distinguished President; but I am deeply grateful for the warm welcome which you have given me and for the generous words of your eloquent and distinguished President. It is especially pleasant and gratifying to hear them in the present congenial surroundings. Notwithstanding a keen sense of inadequacy and undeserving, it is especially gratifying to me, and it is delightful to come here, and for one evening at least to lose one's self in a place of such brilliant good-fellowship and gracious hospitality.

I have been in the Treasury now five years, although it seems scarcely possible that it should have been so long. The Treasury, as you know, is a pretty big organization. We have some 53,000 employees and we do everything from settling foreign debts and collecting taxes and customs to enforcing prohibition [laughter]—no—to be accurate: endeavoring to enforce prohibition [laughter], and running public health and public buildings. It is a job which requires not only continuity of attention, but the frequent determination of difficult questions of long-time policy upon which the prosperity of our country so much depends.

There seem to be more obstacles to overcome and greater obstructions to contend against in the conduct of public business than private. [Laughter.] I remember at a dinner which I attended in London when several members of the British Cabinet were present, someone asked the question, "Why is it that business men manage their affairs so much more successfully than politicians?" "Oh, that is easily explained," the gentleman sitting at my side answered, "it is because the business man has only business men to compete with." [Laughter.]

This is true. We do not function as smoothly in public life as in private. The machine is more complicated, conditions more complex, and the factors which we have to deal with are more uncertain. While these difficulties do not add to the ease of the job, they do increase its interest. Under a handicap one feels greater incentive to get results.

And results are possible in this great country of ours. Let me give you an illustration of what can actually be accomplished along the line of sound policy: Some two and a half years ago the Treasury presented a plan for the reform of



taxation, the essential feature of which was a reduction of the excessive surtaxes to normal figures. Here was a subject, economic in its nature, difficult at first to understand and with the popular appeal presumably in favor of imposing the highest possible taxes on the wealth. You will recall the reception this plan had in a former Congress. [Laughter.] Yet through public discussion and the fairness and innate intelligence of the ordinary American citizen we have had a complete reversal of sentiment. The futility of imposing such taxes and the advantage to every one of a proper taxing system, are now generally recognized. Both parties in Congress seem ready to reduce these surtaxes even below the figures originally suggested by me. We approach results. [Laughter.]

With such responsive understanding among the people the handicap of public service is indeed an incentive. If handling public business is like running a race in a sack, at least all other nations competing with us have similar obstructions to rapid progress, and I think that we in America by all odds have the best sack to run in. [Applause and laughter.] We can have confidence in the basic soundness of our people and of our institutions.

I left a good job to take public office. [Laughter and applause.] When I was in business I was master of my own time. I could meddle with business more or less as I chose, or could sit at the fireside and mould bullets for use of those in the firing line, but now I find myself ever in the front trenches. [Laughter.] Freedom of thought and of action are restricted.

But when I come into the friendly atmosphere of the Lotos Club among men who are, to some extent at least, masters of their own time, I appreciate your good fortune. [Laughter.] However, I am not complaining. Public office must have its drawbacks as well as its many compensations. The work is interesting and there are gleams of fun now and then. Yes, there are many compensations, and among them is the opportunity I am afforded of seeing my friends from New York who are at times obliged to visit Washington. [Laughter.]

Again I thank you for your wonderfully cordial reception. [Applause.]



# CHARLES NAGEL

## CHAMBERS OF COMMERCE

Charles Nagel was born in Colorado County, Texas, in 1849, studied in the University of Berlin and Washington University, St. Louis, was admitted to the Bar in 1873 and was Secretary of Commerce and Labor in the cabinet of President Taft. This address was delivered at the exercises dedicating the new building of the Chamber of Commerce of the United States, in Washington, D. C., on May 20, 1925.

It must be obvious to you, as it is to me, that this is not a political organization. The Chief Justice will bear me out if I say that it is contrary to all political tradition to remember anybody for anything that he might have done, for a period of more than ten years.

At the same time, the organization of this body did involve some political considerations. It may have been easy enough to find a secretary who would give patient ear to intelligent business men, and to be persuaded of the need of this organization. But it was a rare fortune to have in the White House a President who always gave patient audience to his secretaries, and who, after he decided, had the courage and will, to stand as President of the United States, for the idea that had been adopted. Without him, we could not have done it, although I want to be fair and say that not even after he had given the word—and I shall speak of only one man—if we had not been fortunate enough to think of Mr. Wheeler, and to have appealed successfully to his patriotic spirit, in my judgment this organization would have died.

More than that, I belong to that school of politics which does not believe that anything is created by the form in which it happens to be cast, or by the man or men who happen to pro-



mote it. No law can live, and no institution can survive, unless the wills of those who are to be governed or who are to be benefited, are in favor of that institution. The truth is that the conditions in this country were ripe for a Chamber of Commerce of the United States, and we were fortunate enough to recognize it, and to have a President who believed in seeing it done.

What were the conditions? Up to that time we were divided by the rule of self interest in this country. The labor unions stood for one side, the merchants for another, industrials for another, agriculture for another, and each believed that its purpose must be to seek the greatest advantage for itself, regardless of the cost to the others.

We were not unlike the illustration given by Sydney Smith, who is said to have walked through the streets of London with a friend, and, seeing two women talking violently at each other across the street, each leaning out of her particular window, stopped and said, "They will never agree." When asked why, he said, "Because they are arguing from different premises."

That was our situation, and the idea of this institution was to organize the commercial and industrial forces of this country upon an intelligent basis, for their own information, for the enlightenment of the entire community of this country, and with a view to find rules of conduct that would permit them to prosper because those who were related to them in one way or another were equally prosperous with them. The purpose was to find a mutuality of interest in this country, instead of perpetuating the eternal antagonism that had prevailed.

Much water has flowed over the dam since then. Sometimes I hope that some of it has had the advantage of the clarifying process.

We have had experiences in this ten or twelve years that are bound to modify many of our views. If the war has had no other good result, it has certainly forced us to think and to reflect and to amend many of the accepted rules of action which had up to the time of the War governed us.

I feel safe in saying that the accepted rule of competition, as understood in those days, no longer controls as it did then. I feel safe in saying that the popular prejudice against the



mere power of an organization no longer persists as it did, just as I believe that the most powerful industrial organizations of this country see more clearly now than they did then that the maintenance of their power depends upon the just and fair employment of it.

We have seen what competition may mean. We have been forced to accept the truth that no nation can prosper so long as a large percentage of nations lie low. We know now that to carry on war is one thing, but to mend its consequences is another; and that in the last analysis, the prosperity of even our advantaged country must depend upon the ability of all the peoples of the earth to survive by their own means and their own methods.

That is true in business. Competition has suffered some modification. Altogether, we have less confidence in the employment of force than we had. We made war upon it. We have come to see that force, as a permanent power, is not safe. Repression—Yes. Every rule of conduct must be sustained by the ability to repress the few or the percentage that will not obey. But so soon as any statute or law depends upon the power of repression from day to day, so soon as any statute must be enforced against the great mass of the people all the time, in my humble judgment, it ceases to be a law.

We like to trace our system of law to Great Britain—and we should. We could find no better source for inspiration as to how law ought really to be made, because Great Britain is the one country whose law was built upon the custom of the people by present consent.

What have we come to? We have embraced the belief that when a resolution is authorized to be printed, and is called a statute, it has become a law. It should be, but it will not be, until the will of the people is really behind it. We are not safe in assuming that a naturalization paper makes a citizen. It gives him the right and the privilege to become one. We are too willing to take the form for the spirit, and that is the explanation of the over-legislation that has flooded our country.

These are all questions in which you are perhaps more interested than any part of the community; but in the last analysis every citizen is interested in not having our statute books



loaded down with legislative promises which the executive branch of the Government cannot keep.

President Coolidge said in his last message:

*Unless the desire for peace be cherished, all the artificial efforts will be in vain.*

He spoke of foreign affairs, but he struck a note which is universally true. Nothing is more true, to my mind, than that we are given to make resolutions, statutes, speeches, promises, and that we ought to learn to substitute conduct for speech. That is what we need in this country. If I were asked how to explain the unparalleled support that has gone to President Coolidge in the last year, I should say that it is precisely because he, in his official conduct, has given most persuasive proof of the recognition of that simple fact, substitution of conduct for speech.

That should be the motto of the Chamber of Commerce of the United States. Of course, this organization is interested in knowing what legislation is put upon the books. It is interested in preventing, at times, in amending at others, in helping to shape and formulate, yes. But it is, in my judgment, more interested in helping to mold a rule of conduct that will not invite any legislation.

Lincoln said that he who molds public opinion will have far more influence than he who makes or enforces laws. That is a simple truth, but, as I have often said, we always talk about Lincoln, and we do not live Lincoln; and that is what we need.

The Chamber of Commerce, in my judgment, has one of the great problems before it, in that it ought to seek to interpret and to impress upon its membership and upon those outside of its membership rules of conduct that will invite satisfaction, and that will repel, of themselves, every attempt to regulate. That is a large contract, but it is the only salvation there is. We cannot win by simply resisting proposed legislation. We can only win by taking the sting out of the complaint, and leaving the challenger helpless and hopeless. That is the measure.

I have believed that all organizations in this country should have more power and control over their own membership and



the conduct of their enterprises. We lawyers are permitted to appoint committees to pass upon the examinations for the admission of new members to the bar. The state gives us that much right, or the courts confer that much authority. But after we have admitted the member, it makes no difference how serious his offense, we have no power whatever to remove him from our midst, and in most states we must wait until some jury sees fit to disbar him.

It is so in other professions. I believe that you in your capacity as a Chamber of Commerce should have more control and more incentive to demand that misconduct by which you are apt to be judged should be corrected, either by your own authority, or by a report made to the authority named by the state. The burden is upon you, because your good standing is at stake, and your reputation always goes to the lowest level of the worst member.

Mr. President, I ought to apologize for having gone as far afield as I have. Perhaps the fact that I have been sent back to my profession, and am trying to make a living at it, has created a natural disposition to undertake to advise. Please do not charge me with that. I am profoundly concerned. I am deeply interested. I build the greatest hopes upon this institution. I would like to participate in the deliberations this evening, and have as best I can, and I trust that anything I may have said may not have seemed to obscure the sense of gratitude which I feel at being included in this ceremony.



## RICHARD OLNEY

### COMMERCE AND ITS RELATIONS TO THE LAW

This address was delivered at the one hundred and thirty-sixth annual banquet of the Chamber of Commerce of the State of New York. Richard Olney, born 1835, died 1917, eminent lawyer and statesman, was Secretary of State in the Cabinet of President Cleveland.

I AM obliged to you, Mr. President, for your complimentary introduction, and highly appreciate the cordial greeting of this distinguished gathering.

I have been informed by the president that I am desired to speak to the sentiment, "Commerce in its Relations to the Law." The subject is so large a one that you naturally hear the statement of it with some alarm. I hasten to allay your fears by assuring you that I propose to emulate George Washington and Thomas Jefferson, neither of whom, Mr. Morley says he is informed, ever made a speech of more than ten minutes' length. In that time, of course, only one or two phases of the great theme assigned me can possibly be touched upon.

It is almost superfluous to premise that law is the very life blood of commerce, although it may be equally pertinent to add that without commerce—commerce in the largest sense, and comprising all pacific dealings between men—the law would perish from inanition—and my friend on my left (Mr. Shaw) would undoubtedly say that the lawyers also would share the same fate. Commerce and the law are, in truth, interdependent, and the question which is to be deemed the first in time and importance is like the old insoluble conundrum—whether the egg precedes the hen or the hen precedes the egg. [Laughter.]

If the intimate connection between commerce and the law everywhere and always is too plain to be overlooked the most



superficial student cannot fail to be struck with the vital part both have played in American history. In differences over commercial relations with the mother country originated American discontent with British rule, the Declaration of Independence, the Revolutionary War, and the final severance of the American colonies from the British crown. That done, we made ourselves into a nation under a written constitution of government. What were the guiding motives of its authors? What were the two great ends they had in view? One of course was protection and defense as against foreign aggression. But the other was the regulation of the national commerce, that is, of all commerce, foreign and domestic, not limited by State lines. Could there be a greater tribute to commerce than that it was thus and then recognized as one of the two great objects of the creation of a national government? And could there be a greater tribute to law than that, embodied in its highest form in the national constitution, it was thus and then recognized as the next friend and best guardian of commerce? The wisdom of the men of 1789 has been fully vindicated by the course of events, and to-day it may almost, if not quite, be asserted that the controversies arising under the national commerce power and adjudicated by the Supreme Court of the United States exceed in number and interest and importance all the other controversies that great arbitral tribunal is called upon to determine.

The term "arbitral" suggests another feature of the relations between commerce and the law of the first importance. The law not only supplies the rule by which commerce is regulated and the machinery by which the rule is given effect. It is also the substitute in the affairs of civilized men for the domination of brute force, and it conserves and stimulates commerce by promoting international peace. Commerce thrives and grows only in the atmosphere of peace, and the American people have always given all efforts for arbitral treaties between the United States and foreign countries the strongest approval. They observe, I am sure, with the greatest satisfaction, everything the Washington government is now doing in that direction. But what in essence are such treaties, and what, if effective, do they really accomplish? They simply put the rule of law in the place of



the tyranny of the strong hand, and make right instead of might the controlling factor in the commercial and other intercourse between States. The substitution should be peculiarly acceptable to all peoples not afflicted with despotic rule, and with whom the cardinal political tenet is that government shall be a government of laws and not of men. [Applause.] Yet it has been urged against a proposed arbitral treaty between England and America that to submit a really great cause to an arbitral tribunal made up on the customary plan would be to take a serious risk. Each party having an equal number of arbitrators, the foreign umpire, it was argued, would really decide the case; from lack of knowledge or inadvertence might reach results not desired by either party; or might be so biased or prejudiced by interest or sentiment as to completely ignore the intrinsic merits of the case. The best solution of this difficulty thus far offered is one especially applicable and appropriate as between the two great English-speaking peoples. Both have a unique and almost unquestioning faith in their judges, in their integrity, impartiality, and wisdom, and the solution I refer to consists of dispensing with the foreign umpire and constituting the arbitral tribunal of national judges of the highest repute, chosen half by one party and half by the other. How vital it is that such an arbitral board should consist of judges, of judges too high-minded and too eminent in station to be suspected of mere partisanship, is shown by a recent instance in which the Lord Chief Justice of England saved the situation, and by coinciding with the views of his American colleagues on the Board, prevented a deadlock which would have aggravated all the difficulties and perils the arbitration was designed to remove. [Great applause.]

In this connection, and in view of the immense importance of a good working provision for a peaceful mode of settling controversies between Great Britain and this country, let me add a single suggestion. It is not enough that a dispute be settled by arbitration, nor even that it be settled right. It should be so settled that the loser shall have sufficient reason to believe that its side of the case has been fully and fairly considered and dealt with. To pack such an arbitral tribunal as I have been describing with political partisans publicly pledged



in advance to one view of the case, and thus to make it certain from the start that, if any decision is reached, it can be only one way, may be smart practice, may result in an award for the party indulging in the practice. But a victory so obtained may be worse than a defeat, is worse than a defeat if it leaves behind it a people which should be friendly but which is alienated and aggrieved, not so much because it has lost as because it never had a chance to win. The basis of all true arbitration is the confidence of the parties in each other's honesty of purpose and fairness of dealing. No deadlier wound can be inflicted upon the cause of peace through international arbitration than to shake that confidence. Yet shaken it must be if a court of arbitration that ought to be as judicial and impartial as the lot of humanity will permit, is so treated in its make-up by one of the parties as to make impossible any verdict against itself. Not to consent to arbitration may be justifiable, and, at all events, is straightforward; to delude an opponent by a consent which is a sort of "Heads I win and tails you lose" affair, is unworthy of a self-respecting nation, and is as bad in point of policy as it is indefensible in point of morals. [Applause.]

The New York Chamber of Commerce, interested in international arbitration because it means peace and interested in peace because it is vital to commerce, cannot exercise its great influence at home and abroad to better purpose than to stand on every fit occasion, not only for arbitration as against war between nations, but for arbitration arranged and conducted on the highest plane of honor and good faith. [Applause.] No legal tribunal, of course, is competent to enforce correct conduct as between sovereign States or to punish for misconduct. Yet there is a bar to enlightened public opinion before which every State must stand and plead and justify itself under penalty of the censure and condemnation of the civilized world. And to form and mold that opinion, and give it weight and authority, is among the highest functions of the famous association whose splendid hospitality brings us together this evening and whose annual feast is one of the most notable occasions of the American year. [Applause.]



# ROBERT L. OWEN

## THE CURRENCY BILL

Speech delivered by Senator Owen before the Economic Club of New York, November 10, 1913. The bill discussed by Senator Owen was later adopted, establishing the Federal Reserve Bank. Mr. James Speyer introduced Senator Owen as follows: "It is a great honor for me to introduce to you as the next speaker a man who has had ten years' experience as the president of a national bank, and who has been in public life for years; one who has by his sympathy with us given proof of that intelligence and altruistic spirit so essential to a successful legislator and who now occupies the place of Chairman of the Committee on Banking and Currency in the Senate of the United States—Senator Owen." [Applause.]

GENTLEMEN OF THE ECONOMIC CLUB:—It gives me great pleasure to appear before you and to advocate this remarkable mastodon, which the professor says has been erected or partially constructed down in the city of Washington. The luminous and interesting remarks of the professor, in criticism of this strange animal, remind me of the wonderful accuracy and geographical learning of a distinguished citizen of New York who engaged me in conversation at the Knickerbocker Hotel some time ago. He sat down and after some genial conversation finally said to me: "Where are you from, sir?" I said with reasonable and pardonable pride, "I am from Oklahoma." He said, "Ah, what state is that in, sir?" [Laughter.]

The time allotted me by this club is very short. I must not detain you many minutes. There are others to be heard.

This Bill proposes to give to the financial system of the United States certain important improvements which have been found essential to the perfection of our national banking system. It is agreed on all hands by those who are learned in this matter that we need to concentrate and to make mobile the



bank reserves of the United States; that we need to supplement the concentration and mobilization of reserves by elastic currency and by these means build up in this country an open discount market which will enable the business man of the country at all times to obtain the accommodation which his merit entitles him to. We need these improvements in our financial system in order to stabilize the interest rate.

I remind you that the Bank of France during the last fifty years for over three-quarters of the time has not gone above a three per cent interest rate; that for eighty-five per cent of the time it has never exceeded four per cent; and the same thing is measurably true of the German Empire because of the great influence of the Reichsbank acting there as a great public utility bank—a bank holding in its hand the available reserves having the power to issue “legal tender notes.” And I beg you, gentlemen of the Economic Club, to mark the words “legal tender notes” against commercial bills under a penalty sufficient to cause automatic retirement. The Bank of France in like manner has the right to issue a large volume of bank-notes; also legal tender notes, private corporation though it be; and the Bank of France keeps available at all times a sufficient margin of those notes to protect the commerce and industry of the French Republic against any possible demand upon it.

It is easy to criticize a measure; it is far more difficult to write one that is beyond criticism. This Bill which provides for twelve regional banks—not less than twelve regional banks—has been severely and caustically criticized, because it did not establish one central bank. We are advised here to-night from this rostrum that the Democratic platform at Baltimore declared against the Aldrich plan for a central bank. The fact is that the proceedings of the Convention as duly reported was against the Aldrich plan “*or*” a central bank, not “*for*” a central bank; and in the campaign book that went out the letter “*f*” was inserted. It was a sin of commission and not a sin of omission and the guilty party has not been found. [Laughter and applause.] It may have been a typographical error; it may have been an accident; but whether it were or not, it is not necessary for a Democratic platform to declare against a central bank, because a country three thousand miles wide from



east to west and fifteen hundred miles from north to south ought not to have a central bank as a matter of economic justice and wisdom. [Applause.]

You take England—it has a central bank, a great public utility bank, protecting the commerce and industry of England. You take France—it has a great central bank; but consider the size of France which has this central bank with nearly five hundred branches and sub-branches and agencies, and France could be put inside of Texas and have some room to spare.

The German Empire could be put within the confines of Texas and have room to spare, and yet the German Empire has a great central bank. Why does not all Europe have only one? It is not because of the size. There are abundant economic reasons to justify each of the fifteen great public utility banks of Europe. Each one serves a particular constituency, and each one has numerous branches. The Bank of Germany has nearly five hundred branches and sub-branches. The Bank of Belgium is an independent public utility bank serving the same function; and the Bank of Netherlands is an independent bank serving the same purposes, and yet you may take these three banks and the things they represent and put them inside of Oklahoma and never miss them. [Laughter.] The question after all comes down to a question of serving the people; and a bank which will serve six or seven states will have as large a responsibility exerted by its boards of directors who are required to keep in close touch with the credits of six or seven states as they ought to have, and if you had twelve banks in forty-eight states it would be an average of four states to a single bank.

So that the criticism of this Bill because it distributes this power, and leaves each community to elect a board of directors representing that particular community, limited with regard to their credits, is not justified. This measure is criticized because it is called a governmentally owned central bank. If this great power of discount were put in the hands of a bureaucracy, whether that bureaucracy were in the hands of Democrats or of Republicans or of Bull Moosers, it would be a hazardous enterprise, because it is putting power of so gigantic a character into a few hands, to be exercised over this great republic. It is un-



wise, from a governmental standpoint. Now, I am not going to undertake to defend this Bill in all these particulars. I am only going to point out to you the essentials of this Bill, and how we have tried to meet objections.

It has been urged recently that, because this is not a governmentally controlled bank, the Bill ought not to pass, and we have found some adherents who admit, since this argument was made in favor of a governmentally controlled bank, that this system which we proposed of banks managed by the banks under governmental supervision with the reserves contributed by the banks, with the public funds used by these banks, of about two hundred millions—four hundred millions of reserve, and two hundred millions of public funds—we are told that the banks who are putting up four hundred millions of their reserve ought not to have any representation at all on these directorates, which will have charge of the funds that they contribute. If that advice were to prevail, I should then feel that the banks of this country were justified in saying that they were unfairly treated. I think that when the banks of the country furnish four hundred millions of dollars of reserve it is only fair and just that they should have a majority of that board to safeguard the funds which they are required by statute to put into these banks. [Applause.]

The Committee of the Senate has been between Scylla and Charybdis. We have had the most remarkable advice given us that any committee in the world has ever received. We have been told of many plans, of methods to accomplish our purpose—men have come there and insisted that the true standard of value was the kilowatt hour. [Laughter.] Other men have come there, and written books and presented them to show that the only thing we needed for a standard of value was a dollar, printed on paper, but limiting the number of those dollars. We have had all kinds of advice; and we have pursued a moderate, cautious course. We have given governmental supervision of this system; this Federal Reserve Board is made a purely governmental board, because it was exercising purely a governmental function, supervising the system of banking for which the government of the United States was responsible.

We have in this country an entirely different system of bank-



ing from that in Europe. We have an independent bank system, each bank being required to stand on its own base, each bank an independent bank, and not a branch bank. The European banks are great banks with branches all over the country. We have twenty-five thousand banks in the United States, each one protecting itself, protecting its own reserves; and it has been this competitive striving for reserves by the independent banks which has caused to so large a degree the dangerous conditions which have heretofore prevailed and which have led to the panics of the past. Under this Bill, with these reserves concentrated in the hands of the experienced bankers handling the local bank, and the branches of the local banks, all under the safeguard and supervision of the Federal Reserve Board, controlled by the United States, we have the banks on one side of the table, and the government on the other side of the table looking at each other across the table, neither one trusting unduly to the other, with the most complete publicity of every act of the federal reserve bank, under the safeguard of governmental supervision.

Why should California, desiring a credit, be compelled to come to Chicago or Boston? Why should not California have a federal reserve bank of its own? The Pacific Coast, furnishing its own capital, and with the friendly hand of the United States behind that organization?

These twenty-five thousand banks now have twenty-five thousand individual reserves; and when we make twelve banks—if the committee makes twelve banks—I remind you that it is a gigantic step forward in concentrating these reserves, where instead of having them subdivided in twenty-five thousand individual vaults, we bring them into twelve concentrated reserves. Is that not a very great step forward in concentration? And since we cannot, as a political exigency, or as an economic propriety, have one reserve, in order to make these reserves of common use throughout the country, there ought to be power somewhere to require the reserves, in a case of exigency, to serve their function by transferring credits from one to the other. In my judgment no such power will ever be exercised. In my judgment, under the terms of this Bill there will never arise any occasion whatever for the exercise of that power. Yet, if a



national exigency should arise, the power ought to be lodged somewhere in order to protect the national credit of this great republic.

Now, public opinion has much to do with the action of Congress; and it was for that reason that I felt obliged to come to this meeting and to present to you the outlines of this Bill. It is impossible, within thirty minutes—and a man ought not to take longer on an occasion of this kind—it is impossible within thirty minutes to deal with a great measure of this kind. I can deal only with the essentials of it, and I have given you only the barest outline of the manner in which we are proposing to concentrate these reserves, make them mobile, provide for elastic currency by the issuance of federal reserve notes, and safeguarding the system by the supervising power of the government of the United States.

We have been charged with making the great and serious error in having these notes obligations of the government. Yet, I remind you, that thirteen years ago, by the act of 1900, the Secretary of the Treasury was required by law to maintain the parity between all forms of money issued by the United States. If the government must maintain the parity of all money emitted in the United States under the law—and that law has been so far prized that it was insisted that it should be re-declared in this very act; and it is in the act as a new declaration, pledging the act of 1900 as the law of the land—why demand that these notes should be the notes of these banks, and not the notes of the United States, although the United States is compelled to keep them on a par with gold? They must still be private notes, by a private corporation—a corporation directed by the government, and the government compelled to redeem them in gold.

Gentlemen of the Economic Club: The Government of the United States is compelled to redeem those notes in gold; the citizen who receives one of these notes from the Atlantic to the Pacific must be satisfied, without examination, that these notes are as good as gold; he must not stop to examine into the validity of the bank which emits them, any more than he will stop to examine a national bank-note, to see whether a national bank is safe and sound. A national bank can go out of exist-



ence ; a national bank can be proved worthless ; a national bank can sign its note or not sign its note ; the signatures of the officers of the bank may be forged to the note, and yet its notes are as good as gold, and are kept on a parity with gold by the laws of the United States. Will you give me any sensible reason, under such circumstances, why these federal reserve notes should not be the notes of the United States ?

The people of this country have a right to know that every dollar that is current is as good as gold, and it is because of the fact that the Government of the United States is pledged to maintain the parity of all forms of money emitted in the United States with gold.

Now, gentlemen, I must not detain you longer. I want to thank you for the courtesy of your attention. I must yield the platform to those who follow so that I may not unduly trespass upon the time allotted them. [Applause.]



# JOHN HOLLIDAY PERRY

## NEWSPAPER LAW

This address was delivered before the International Press Congress held at the Pan-American Pacific World Fair, San Francisco, California, July, 1915. John H. Perry was born in Port Royal, Kentucky, in 1881, and was formerly counsel for the Scripps Newspapers and the United Press Association. He is president of the American Press Association of the John H. Perry publications and of the Publishers' Autocaster Service. Mr. Perry has had large success as an editor, a capitalist and a lawyer.

I HAVE come to speak to you on what I have termed "Newspaper Law." To those of you who are of a legal turn of mind the question will probably suggest itself, what is newspaper law? Generally speaking, it consists of those branches of our laws which apply mostly to newspapers and magazines. There are five branches of this law which compose "Newspaper Law":

First—The Law of Copyright.

Second—The right to privacy.

Third—Civil libel.

Fourth—Criminal libel.

Fifth—Contempt.

No legal writer has as yet seen fit to bring forth any textbook on "Newspaper Law" as such. True, considerable has been written on the law of copyright. Little has been written on the law of the right to privacy. We have three or four volumes on the law of civil libel. In connection with these volumes on civil libel the writers have included a chapter or so on criminal libel—one of the most important branches of the newspaper law, and a law so different from civil libel that it should be separated in its entirety to avoid the confusion which has resulted throughout the country, both in the enactment of legislation



and in the construction placed upon such legislation by the supreme courts of the various states of the Union.

We have a small volume or two written on contempt law. Rapalje has given us a couple of hundred pages, and Judge Thomas, formerly and for many years Chief Justice of the Supreme Court of Missouri, contributed a small volume of about two hundred pages, which volume he has entitled "Constructive Contempt." This work is not the law as it is generally laid down by the various state judicial tribunals of our country. However, Judge Thomas' reasoning is unanswerable, and it shows the fallacious reasoning of the various courts of the country in handing down decisions on constructive contempt.

My purpose in speaking to you on "Newspaper Law," as such, is two-fold: First, that I may convey to you as newspaper men and women some of the most important general principles of "Newspaper Law." Secondly, my purpose is to try to crystallize all the five branches of the law, that of copy-right, right to privacy, civil libel, criminal libel and contempt, into one law known as "Newspaper Law." There is to-day an urgent need to have these five branches of the law, in so far as applicable to newspapers, crystallized into one law, to be known as the "Newspaper Law." The supreme importance of the newspaper business itself is a sufficient necessity for such action.

The most potent, the most influential and the most useful business of to-day is the newspaper business. The newspaper and the magazine as an institution is the most indispensable institution in our land to-day. In fact, without this institution we not only could not expect to progress, but our institutions for freedom of this day and age would crumble in the to-morrow.

There is need for a codification of the newspaper laws which would be separate and distinct from the same laws when applied to individuals. This is quite apparent on its face. For instance, the newspapers and magazines are no longer local in their influence. They are national in their circulation, therefore in their influence. You go down upon the streets of our city to-day, and you can find for sale newspapers and maga-



zines from every large city in the world. And, again, the great disseminators of the news service are not at all local in their operation. You might say that the news of the entire world is to-day disseminated by five or six enormously large institutions sending forth their telegraphic service. I refer to the Reuter Telegraph Company, which covers Great Britain, the British Empire, and the British Provinces; The Wolf Agency, which covers Germany, Scandinavia, Austria and all of their Provinces and allies; The Havas Agency, which covers France and the Latin countries and their smaller allies, countries and provinces. Then, in America, we have the Associated Press, a New York corporation, which furnishes practically all of the great morning papers throughout the country, and many afternoon papers, and the United Press Associations of New York, which, under the capable management of Roy W. Howard, its "live wire" president, has grown like a "prairie fire." To-day it furnishes about six hundred daily afternoon papers throughout this country. So here is an instance of five telegraphic news agencies which gather and send forth the news of the entire world to the people of all the world. So news gathering is not local, but it is international. The dissemination of news is hardly a local question, but a national and an international problem, and the newspapers and magazines of to-day have grown to such an extent that the printing only of those papers and magazines is local. They are published broadcast throughout the many states, and in a large number of instances their circulation encircles the entire globe.

You publishers who are making the newspapers of to-day are making the history of to-morrow.

Our various states have codes of laws applying to every phase of every business and every profession from that of selling garden seeds for agricultural purposes, or regulating the massaging of the spinal column only by licensed Osteopaths, to requiring that only Allopaths with sheepskin attachments may prescribe pills for the ills of the people. We have our code of banking laws, our penal code, our fishing code, the inn-keepers' code, the mechanics' lien code, and the merchants' or negotiable instrument law. We have codified about everything and everybody excepting the newspaper law.



It is to be regretted that all of our various codes were not enacted along the same line of procedure as was our negotiable instrument law so that there would be a uniformity in the laws among the various states of the Union. The negotiable instrument law is a product of many years of profound thought on the part of many master minds. After its enactment as a part of the law of England, the American Bar Association, through some of its ablest members, was induced to take up the matter of securing its adoption without amendment or change in the various states of our Union. With this end in view, after this law was fairly well perfected, it was submitted to the various states and its adoption was urged *in toto*. It was pointed out that it should not be amended or altered or changed in any manner for the reason that one of the great purposes of this codification of the negotiable instrument law was to obtain uniformity throughout the various states. It has been enacted and become a part of the law of the majority of the states of the Union. The beneficial result of this is that it has made the law the same in every state wherein it has been adopted. It has standardized the law of negotiable instruments, which is supposed to be nothing more than the custom of the merchants and business folk of the country. And, again, the great benefit of this law is its stability and permanence, from which has resulted a common knowledge of the law merchant.

With our system of law making through our state legislative bodies we confront the situation that as these bodies assemble in the various states annually or bi-annually the laws are changed, abrogated, amended or repealed, or conflicting statutes are enacted in contravention of the spirit or letter of previous statutes to such an extent that the result is a confusion which has prohibited not only the public, but even the lawyers and the judges themselves from knowing what our law is to-day. We may fill our statute books with excellent laws, but there is something more important, and without which our excellent laws are of little avail or usefulness, and that is the knowledge of the laws. There is an old maxim, that "ignorance of the law is no excuse"; that "everyone is presumed to know the law." Of course, such a presumption is absurd upon its face. Very few people have a full knowledge of any of our laws,



none of them has a knowledge of all our laws, and many of them know nothing of our laws. You ask the reason why. It is this: That under our present system of legislation our laws are changed so frequently, amended so often, and drawn up so haphazardly, and chiefly are either class or political legislation. While our legislators are in session no living human being knows what the laws may be to-morrow. And to know what they are to-day it is necessary to read the latest edition of your daily papers. The average legislature proposes more than one thousand new laws in every state of the Union at every session. Many of these bills actually become laws, and still you are presumed to know what is the law. The crying need of to-day is for fewer laws, but those laws which we have let us have perfected.

Now, when I advocate the codification of the "Newspaper Law" I am not having in view a codification of those laws in the haphazard manner in which the legislature of this state, or of the various other states enact such laws. What I suggest is this: That a national commission be appointed to draft and perfect, as nearly as it is within human power to do so, a newspaper code covering the various branches of the law applicable to magazines and newspapers, and, after the master minds of our country perfect such a code, that it be submitted to the people or their representatives in the various states of the Union for enactment, with the distinct understanding that to reap the benefits of this law it should be enacted without change or amendment so that this code of laws would become uniform in all of the states of the Union. And then, after we have perfected our code of newspaper law, let it remain in force and effect, because only by being a permanent law will the newspaper men and the public in the years to come become possessed of a knowledge of that code of laws, and a knowledge is the only thing which makes such a law of value. If the laws are to be changed at each session of the legislature no man can be reasonably expected to possess a knowledge of those laws. It is only when they become perfected and are enacted as uniform laws throughout the country that it tends to become public knowledge. Our haphazard enactment of laws has destroyed the uniformity of our laws, and continued the public in igno-



rance of the laws, which has resulted in loss of respect for our laws. And then we cry, why do the people have no respect for our laws? A law which is enacted into the law of the land as perfected and based upon common sense and common justice, and is allowed to remain sufficiently long for the public to acquire a knowledge of such laws will result in profound respect on the part of the public for such law. How can the public have a respect for that which they know not? Ignorance breeds contempt.

There is hardly a session of the legislature in any state of our Union but what the members of that assembly introduce from one to a dozen bills amending, repealing or changing many of the fundamental laws concerning newspaper and magazine publications. Such proposals are not confined to the state legislature, either. We had the aspect in the last Senate of the United States by no less a personage than Senator John B. Works of California, proposing a law in that august body to prohibit newspapers and magazines printing or publishing in the District of Columbia any news whatsoever of any crimes, or any accidents, or any gossip in that District.

In the legislature of each state you will find one or two of the extremes—either one that is extremely radical in favor of an unbridled or unmuzzled press, or one that is against the principles of a free press at all. If some legislator has been a pet of the newspapers of the district from which he was elected, if they have written stories about him that have made him believe he is a great statesman and an indispensable personage to his people, then he will advocate the abolition of any restraint or limitations whatsoever upon the laws regulating newspapers and magazines. If, on the other hand, he has been subjected to criticism, no matter how justly, if he has been branded by some newspaper as a gangster or a shady politician, or a ward-heeler, no matter how truthfully, then, no matter how radical an act may be to suppress legitimate news and destroy the freedom of the press, you will find that class of legislators doing their utmost to enact such legislation against newspapers and magazines.

We have an example, for instance, in one state, where one session of the legislature which was extremely bitter against news-



papers in general, and wishing to punish certain newspapers in particular, enacted a law which prohibits the publication of photographs of private persons, or anything else pertaining to any private citizen of the state without the written permission of that citizen, and requiring every article published to carry the name of the writer. As a result, the enforcement or attempted enforcement of such legislation soon causes the pendulum to swing the other way and then the legislature, acting at the other extreme, removes all brakes and permits the publication of anything they see fit and not prescribing a just punishment for the abuse of such a privilege.

Thus, as a result of this haphazard legislation on the part of the various states, you will be able to find decisions holding just about any viewpoint you may wish to sustain, and I regret to say that you will find them in too many instances colored by political influence.

In fact, it is no exaggeration to say that in so far as it is within their power they formulate two rules of law—one for their political friends and another for their political enemies. And you will find this more or less true in a great many criminal as well as civil libel prosecutions throughout the United States. A uniform newspaper law code would largely abolish this evil. It would estop class legislation and eliminate all sinister political influences from newspaper legislation.

The one branch of the newspaper law which is more uniform throughout the states than any other, more uniformly interpreted and better understood, is the law of copyrights. This, for the reason that the Congress of the United States has enacted a copyright law—a very fair and just law. As all of the newspaper fraternity know, the purpose of the copyright is to guarantee to the producer a safety against the larceny of his original thought or original language. Of course, in many instances the line of demarcation between piracy of one's language and thought is most difficult to discern. It is impossible for the law to prescribe more than a general rule of conduct governing the appropriation of one's language or one's thought. It is a field in which each particular case must be decided more or less upon the particular facts of that case. However, I do want to condemn the practice of any editor or pub-



lisher in publishing his paper with his hand and a pair of scissors rather than with his own brain and a lead pencil. Of course, language is only the carriage in which thought rides. It is impossible to copyright thought as a separate and distinct entity. It must be carried, and its carriage is the human language in some form expressed. But, Mr. Publisher, if you should leave this hall and going out upon the street you should find there a carriage belonging to one of your fellow-publishers, and you get into the carriage and parade around among your clientele in his carriage as your own, deceiving your clientele, and not even giving your fellow-publisher credit for his carriage, you are guilty of the larceny of a valuable piece of property. Just so with the publisher or editor who goes into his office and finds there upon his desk an article written by a fellow-publisher in a paper belonging to a fellow-publisher, containing that which was the original thought and language of the fellow-publisher. He reads over the language—and language is merely the carriage of thought—and he takes his scissors and clips out that article and publishes it in his own paper, without giving his fellow-publisher any credit or without having any authorization so to publish it; he is guilty of literary piracy, and a thief of that man's language and that man's thought, and he is parading before his clientele in a stolen garb. He is a "thought-thief" and should be made to suffer the punishment the same as the man who steals a carriage or a motor car.

Another branch of the newspaper law, the use and abuse of the privileges which make more plain the necessity of a codified newspaper law, uniform throughout the states, is the second branch of the "Newspaper Law"—that of "the right to privacy." The right to privacy is "the right to be let alone." I will only briefly outline the history of this law for the purpose of showing you the tendency on the part of legislators and the feeling of the public about the abuse of one's right to privacy. One of the first cases involving the principle of the right to privacy was the case of Prince Albert vs. Strange—an old English decision. Strange was an artist, and Albert of royal family. The Prince and his wife employed the artist to perform some work for them—photogravures, etchings and paintings. After



the work was completed Strange attempted to exhibit some of the copies to the public and to dispose of some of the works which he had completed for Prince Albert and his wife. Prince Albert sued out an injunction, and the injunction was made permanent. From this the question began to expand, as to how far one was entitled to a right of privacy—a right to be let alone. The court held in that case that there was such a right to privacy when such a right was based upon either a contractual or confidential relation, or when it was based upon a property right.

In 1889 Louis D. Brandeis (now the brilliant Boston lawyer), while a student in Harvard University, in conjunction with Samuel B. Warren, wrote an article on "The right to privacy" and published same in the *Harvard Law Review*. He attempted to show that the right to privacy should be extended beyond what the courts in England had held in the case of Prince Albert vs. Strange. He argued that where common justice and common reason could be supplied it was incumbent upon the courts to make whatever legal deductions were necessary from established principles, and to enlarge the scope of the law by such reasoning. And he attempted to enlarge upon the law of the right to privacy so as to include within its purview a prohibition against the invasion of one's privacy where it inflicted an injury to one's "feelings." The courts in the New England states have profound respect for the *Harvard Law Review*, and apparently many of the judges adopted Mr. Brandeis' viewpoint and judicially legislated into the law of the New England states an extension of the right of privacy beyond the right to privacy established upon a contractual or confidential relation, or a right to privacy established upon a property right. From the New England states such extension of the right to privacy began to spread and have its ramifications through many of the Middle Western and Southern States, notably in a case that went to the Supreme Court of the State of Georgia, because of an invasion of one's privacy in an article and photograph printed in an Atlanta paper. In that case the supreme court of the state even went so far as to say that as a principle of law the right to one's privacy was not only based upon a contractual or confidential relation



or a property right, but upon the more sacred right of an invasion against an injury to one's feelings. Of course, such an extension of the right to privacy as to cover one's feelings independently of his right based upon a contractual or confidential relation or property right endangered the very foundation of a free press. But this question was more or less positively settled by the court decision of Chief Justice Alton B. Parker, of the Supreme Court of New York State, in a very lengthly decision, when he emptied into the crucible all of the decisions on the right to privacy and all the contentions which had been advanced for the purpose of embellishing upon this right, and brought forth a fairly well crystallized opinion which drew the line of demarcation over which a publisher must not go, and over which the public must not be expected to be protected. He refused to extend the doctrine of the right to privacy to cover an injury to one's "feelings."

I have had occasion to go before the Supreme Court of the State of Washington on cases involving the right to privacy and where the point involved was that of the publication of a photograph of a private individual in connection with a member of his family who had been committing a series of frauds against the United States through the mails. It was maintained that as everything within the article was true, and, as the publication of the photograph was an exact likeness, upon the principle of the civil libel law that the truth was an absolute defense to this action in so far as a civil libel action for damages was concerned, they were estopped from proceeding upon action for damages by reason of any libel. However, ingenious counsel attempted to found an action upon "the right to privacy," and in arguing this case before the Supreme Court of this state one of the justices of the court asked me whether or not the publication of the photograph could have been productive of any good, and I answered that, for the sake of argument, I would say it could not. Then, further inquiring, the Justice said, "What is to prohibit this newspaper from publishing this picture every day?" I replied that the criminal libel law of the state could prohibit it. A repetition of such a publication would be a criminal libel and punishable as such.

Now, that brings me to the point of our libel laws. Some



people, not only editors, have the idea that a newspaper can publish any truth; that they can publish the truth so long as it is the truth, no matter what they publish. This is not the law in so far as a criminal libel action is concerned. The truth of an article is an absolute defense to any civil action for damages. No matter what your paper publishes, if it is true, the aggrieved party may not obtain any damages for such truthful publication, and this is founded on reason and common sense. If an article published contains only the truth of a man's character or his business no man can reasonably expect to recover damages because it would only be common sense that he would not be entitled to damages for a false character or a false business. On the other hand, if an article published be false, no matter how good your motives nor what end you have in view, if that article has damaged another's character or damaged another's business, you ought to be held liable for the amount of damage which you have inflicted upon either his character or his business. This is on the same general principle of damage law that you are responsible and bounded in damages for your mistakes, even though they be honest mistakes, and if you make an honest mistake in your newspaper business and because of that honest mistake your fellow man suffers, you should compensate him in damages in a reasonable amount for such damages incurred by your mistake, however honestly it may have been committed. And the law further is, if it is a dishonest mistake and you maliciously printed false matter about his character or his business he may be allowed, aside from actual damage, a damage which will teach you a lesson and be a strong incentive for your guidance and proper conduct in your future publications.

Now, let us take up the Criminal Libel Law.

As I stated a while ago, there are four or five so-called authorities on the law of libel. They deal almost entirely with the law of civil libel. There are only a few pages in any of these text-books on the law of criminal libel. The law of criminal libel is one of the most important branches, if not the most important branch, of the newspaper law. In fact, there is no branch of any of our laws, newspaper or non-newspaper, which plays a greater part in our struggle for a free press and



free and self-governing institutions throughout our land, and in fact throughout the entire English speaking world, than that of criminal libel. As I stated, you can print the truth, no matter what it is, and not be bounded in damages in a civil libel action. But you may not print the truth in all cases and not be holden responsible for it at the bar of justice in the name of the commonwealth. Less than a century ago the maxim was "the greater the truth, the greater the libel." Can you conceive in this land the enforcement of such a law as "the greater the truth the greater the libel"? Nevertheless, such was the law, and within the last half century. The truth was no defense to a criminal libel. That was the law in all cases. Just think that maxim over two or three times, and then feel your pulse. Not only was this the law that it was a crime to publish the truth, but in our Colonies no newspaper could publish the proceedings of the General Assembly. Their session was a star chamber session, and it was a crime punishable by imprisonment for any publisher to publish to the public the proceedings of their Colonial assemblages. What would you think to-day if under the maxim "the greater the truth the greater the libel," there was imposed a prohibition against the publication of the acts of our legislative assembly? Now, I want to say, and to say emphatically, that there are certain things, to publish which it would be a crime even though true. For instance, to publish of one in private life that he was a little hunchback, sore-eyed, one-legged idiot. Such a publication, though true, would hold him up to public contempt, scorn and ridicule. The mere truth of the article is not and should not be a defense in a criminal prosecution based upon such a dastardly, cowardly, contemptible publication. And there are many things in your domestic life and in your private life the publication of which would hold one up to public contempt and scorn, ridicule and obloquy, without doing the public any good. So I say, that the publisher who publishes such articles, though true, should be prosecuted criminally, and the truth should be no defense. In fact, in that limited number of cases the rule of law is and should always be that "the greater the truth the greater the libel." And it is just such instances of abuse as the publication of this sort of articles which has roused a de-



mand throughout the country for an extension of that law of the right to privacy, because there is a feeling on the part of the public that one's privacy should not be invaded, and that the law should protect him and punish the editor or publisher for such unwarranted invasion of the right to privacy. But, rather than extend the law of the right to privacy to giving the "little hunchback" redress in court against an article published about him, enforce your law of criminal libel to the extent that even though the article be true it must be published with good motives and for a justifiable end.

In many states of our Union, and our own state, they have what is called a Defensive Libel Statute, which says that the truth published with good motives and for justifiable ends is an absolute defense to a criminal libel action. The statute is misconstrued and is misleading. The truth, published with good motives and for justifiable ends, *is* an absolute defense for prosecution for criminal libel. But, even though an article be absolutely false, if the article was believed to be truth and such belief in its truth was based upon a reasonable and careful investigation and was published with good motives and for justifiable ends, then such facts should be an absolute defense, regardless of whether the article was true or false. However, I have found in my practice throughout the country in a large number of states having a similar statute as to the defense of a criminal libel prosecution, that the courts do not seem to grasp the intent of that statute. In trying one case before a Common Pleas judge, he made the statement from the bench that he would require me to prove in defense three things: (1) that the articles published were absolutely true, (2) that they were published with good motives, and (3) that they were published for a justifiable end. And, continuing, he informed me that he would not permit me to show the good motives and justifiable ends until I had first established the truth of every word of the articles. This judge was a graduate of Harvard Law School, and smoked Monogram cigarettes.

The truth or falsity of an article is not the test of the criminality of the article. The criterion of criminal libel is malice. In the course of your experience as newspaper people, can't you recall a thousand false articles which you have printed and pub-



lished which you honestly believed to be true at the time you printed and published them; that you not only honestly believed them to be true, but that you had a fair and reasonable investigation made to ascertain as to the truth or falsity of the article? How, then, in the name of common sense and common reason, can you make a criminal out of a publisher who has published an innocent falsehood? Despite the apparent simplicity of understanding that an article may be false and still not be a crime, I have found, all over the country, court after court confronting me with the proposition that there were absolutely three essentials to be proved before it would be a defense to a criminal libel prosecution, and that the first and foremost of these was that the article must be true. If the article was innocently false, let the man whose character or whose business was injured seek his redress in a civil suit.

Now, lastly, there is that branch of the newspaper law known as contempt.

Newspaper contempt is what in law is known as constructive contempt—that is, a contempt committed out of the presence of the court. In other words, the publication to the world of an article which the court or judge himself deemed to be a contempt of his court or of himself. It is most important that this branch of the newspaper law known as constructive contempt be codified and made uniform throughout the states of the Union. This would evade the pernicious political influence which pervades nine out of ten of the cases of constructive contempt. For a constructive contempt, or a newspaper contempt, the supreme court of this state has held that it has the right to punish the contemner by the infliction of a jail sentence for a period of months.

Now, let us examine into the reason, if there is any, of the power of the courts of record of this state to inflict such punishment. I might say that between 1800 and up to 1831 the United States courts attempted to inflict punishment in the form of fines and imprisonment against editors who published things which the court held should not have been published, and that for a period of twenty-five years seven very important contempt cases were heard before seven respective judges and, of course, in each instance the court determined the accused



was guilty and either fined or imprisoned the publisher. This resulted in such a storm of disapproval on the part of the people that, in 1831, James Buchanan introduced in Congress a law to abolish absolutely the power of the federal courts to punish for "constructive contempt." So, to-day, we have the spectacle of our superior courts, and our supreme courts of this state with a power entrusted into their hands to inflict punishment for a constructive contempt of their court, when the federal court was deprived of such power because the people deemed it a dangerous power to entrust into the hands of a court, if such a power was ever entrusted into their hands. So, since 1831, no federal court has ever attempted to exercise authority over a constructive contempt of court until in the year 1914, when a federal judge in Ohio attempted to and did exercise such authority in the case against Editor Negley Cochran, of the *Toledo News-Bee*. When this Act of Congress was passed, James Buchanan, on the floor of the House, made the statement that never in the future history of the American states would any federal judge dare to usurp such a power as that of punishing for a "constructive contempt." However, the federal judge in Ohio seems never to have read the history of the contempt cases, nor the Act of Congress forever abolishing the right of those federal judges to arbitrarily and summarily inflict punishment for a constructive contempt. If he has, he has taken the very Act of Congress which was intended to forever prohibit federal judges from the punishing of constructive contempt and has construed it to mean the delegation of a court power which the act itself intended to forever destroy.

Now, let us come down to the origin of the right of the courts of this state to punish an editor for a constructive contempt. I read the other day the case against the editor of the *South Bend Journal*—Mr. Hazeltine—a so-called constructive contempt case. The supreme court of this state reversed the conviction of the lower court on a technical ground, but during the course of their decision they refer to their inherent right to punish for a contempt of court. Now, I want to say, I yield to no one in my respect for honest and fair members of the judiciary. I have as much respect for an honest judge as any honest lawyer has, but I will not let my respect blind me to the right-



ness and wrongness of a legal principle which is most fundamentally important. The Supreme Court of this state says, "We have the inherent power to punish for contempt," and they make no distinction between a direct contempt and a constructive contempt. I do not question their power or their right to punish for a direct contempt—that is, a contempt committed in their presence, or a contempt for violation of a legal and lawful order issued from their court. If anyone goes into the confines of a court room and his action is not respectful to the court, or if his action disturb the orderly proceedings of that court, such a person should be punished commensurately with the heinousness of his offense. But, I do question the right of a court to punish for a "constructive contempt." They say they have the inherent power. Now, let us see what *inherent* power they have. The first article of the Bill of Rights of the Constitution of the state of Washington says: "All political power is inherent in the people, and governments derive their just powers from the consent of the governed." The people of this state, when it became a state, assembled in a constitutional convention. They formulated, created and brought into existence three forms of our government. They said, "There shall be an executive department with certain powers, a legislative department with certain powers, and a judicial department with certain powers." If anyone should go into the legislative assembly and obstruct the due administration of the legislative proceedings, that legislative body would have the right to adjudge the intruder in contempt of that body and punish him accordingly. If an obnoxious person would intrude into the chamber of His Excellency, the Governor of this state, and embarrass or obstruct the due administration of the executive official of this state, His Excellency the Governor would have the power to summon anyone and create him instanter a peace officer to inflict summary punishment upon such intruder. But, we do not find that this power for contempt extends to such a contempt as is in law called "constructive contempt." The only power that the judges of this state and the courts of this state have is the power which the people have conferred upon them. They have no inherent power. They get their power from the consent of the people who are governed.



The courts say such a power to inflict punishment for this contempt is necessary to their very existence. I deny the truth of such a statement. The Supreme Court of the United States, which has been referred to as the greatest and most deliberate body in all the world, has been criticized bitterly in many of its decisions—notably in the Income Tax cases, the Insular cases, the Dred Scott decision, and numerous other decisions—and for more than a century that court has sat silently and serenely in the face of those various attacks and criticisms on the part of newspaper and magazine publishers, and has never *seen* fit to invoke the so-called power of punishing for a constructive contempt of court. If the Supreme Court of the United States can move along smoothly for more than a century without the necessity of ever invoking such an alleged power, it seems to me that the so-called reason of necessity is no reason at all, for there is no necessity for such a power.

Now, I want to ask you what would you think if the Governor of this state, during the pendency of some matters of public interest before him, picked up a newspaper and saw some bitter criticism of his conduct or official acts in connection with this pending matter, and it was so distasteful to him and so provoked him that he immediately sent out and cited the publisher before him on the ground that the publisher had committed a contempt against the executive officials of the state of Washington, and the publisher appears before him and the Governor gives him this sort of a trial: "Mr. Publisher, you have criticized my acts on this matter now pending before me; you have embarrassed, impeded and obstructed the due course of my official business; I cite you for contempt. What have you to say for yourself?" The publisher says, "Well, I suppose I have, what will you do to me—what punishment can you inflict?" "Well, I can mete out six months' imprisonment to you." "It seems to me that I am being tried for the commission of some crime. If I am, I demand that I be either informed against by the Prosecuting Attorney or indicted by a grand jury; that I have a copy of the indictment against me, with all witnesses' names endorsed thereon; that I be arraigned in court so that I may know exactly with what crime I am



charged. I demand the right to refuse to incriminate myself. I demand the right to have witnesses for and on my behalf and to the confrontation and cross-examination of all witnesses against me. I am presumed to be innocent until proved guilty beyond every reasonable doubt. I demand the right to a fair and impartial trial before a jury of my peers, and let them judge whether or not I am guilty." "Oh, no, Mr. Publisher, you are not accorded such a privilege. You haven't any such constitutional rights; the Constitution did not mean that when it said no man should be deprived of his liberty without the due process of law. This is not a criminal case; this is what we call a 'quasi-criminal' case, so that you are not entitled to a jury trial and constitutional safeguards." Now what would you, Mr. Publisher, think of such a trial and such punishment as might be inflicted by the Governor of the state because he deemed he had been criticized, and that thereby constructive contempt had been committed against him? Oh, you would have screaming headlines about the injustice of it all. The court has no more inherent power than has the Governor.

I want to advance this proposition: As a friend of the court, I want to submit that if the court desires to be respected it never attempt such a procedure to punish for constructive contempt. I want to submit the suggestion that, a cold-blooded murderer, a porch-climber, a burglar, one who trafficks in the souls of girls, and the vagrant, are all granted their constitutional privileges and rights of a fair and impartial trial, before a fair and impartial judge and a jury of their peers. Can it be possible that all the scum of the earth are entitled to these privileges, and the editor who fights for what he honestly believes to be true, with good motives and justifiable ends, yet may be branded a criminal and imprisoned in a bastille for the sake of sweet revenge at the hands of some judge who believes a publisher or editor has unfairly criticized him?



# ROSCOE POUND

## THE TASK OF THE AMERICAN LAWYER

Roscoe Pound has been dean of the law school at Harvard University since 1916, and is generally recognized as one of the most profound and stimulating interpreters of the law. He was born in Lincoln, Nebraska, in 1870, began the practice of law in 1890, has been professor of law in the universities of Nebraska, Northwestern, and Chicago as well as Harvard, and is the recipient of honorary degrees from many universities. This address was delivered to the Chicago Bar Association at Chicago November 12, 1925.

A RECENT editorial in a conservative metropolitan newspaper, after commenting on the crisis in American law and the palpable inadequacy of our legal machinery in our large cities to the tasks of administering justice and maintaining the general security in the urban industrial society of to-day, reminded the legal profession that the legislatures are filled with lawyers (it might have been more accurate to say filled with members of the bar) and yet the net product of their activity is but to add to the density of what the editor was pleased to call the legal fog. The conclusion was that "the business men and workers" of the country would have to take hold, and, by some means not specified, give us an effective organization and administration of the public agencies of justice.

This is not a new idea. Some years ago, when our mechanical application of constitutional provisions to social legislation demanded by public opinion, led to widespread dissatisfaction with the doctrine of supremacy of the law, there was agitation for popular review of judicial decisions. After the Revolution, when transition from the simple conditions of colonial America to the era of economic, territorial, and political expansion put a heavy strain on the administration of justice, there was clamor



for lay judges, for an American code to be made without regard to the legal experience of the past by sheer American common sense, and for a wholesale rejection of what agitators were wont to call the quirks and quibbles of English law. Indeed, this agitation has left its mark upon our institutions in inadequate provisions for the training of lawyers, in exaggerated powers of juries, and in fetherings of trial judges, in more than one of our commonwealths. More than one unhappy feature of American administration of justice which is a factor for ill in the conditions of which complaint is made so justly to-day, is a result of short-sighted, ignorant application of lay common sense to difficult problems of law and of judicial organization and administration, which called not for common sense, but for the uncommon trained sense of experts.

Again, when the elaborate, formally over-refined, cumbersome, expensive common-law procedure of the eighteenth century required overhauling with the rise of commercial litigation, the rise of tort litigation, and the demand for expedition in a time of economic growth and a land of push and rush and restless change, lay common sense was invoked once more by an impatient public, confident in American versatility and affected, it may be, by the cult of incompetency which is an unhappy by-product of democracy. More than one bad feature of the reform of American procedure that swept over the country after 1850 is traceable to lay application of the legislative steam roller to problems that did not admit of that sort of solution. And this is even more true of our administration of criminal justice. Nowhere has lay insistence upon legislative tinkering with details, without regard to the legal setting of those details, been more continuous and persistent; nowhere have the courts been more tied down by minute and detailed provisions than in criminal law and criminal procedure. When complaint is made as to the multitude of laws and bloated statute books, it should be remembered that the pressure for more laws and the annual infusions that bloat the statute book come not from lawyers but from laymen. Those who cry out loudest for fewer laws are often the first to urge upon the legislature some new special legislative project which, like one of Rip Van Winkle's drinks, is not to count.



When farmers, feeling acutely the results of some economic maladjustment, propose to apply their common sense to economic affairs and embody the product in legislation, they are pronounced visionary radicals. Suppose lawyers were to say to the medical profession: You have been at work on cancer quite as long as we have been at work on legal problems of over-grown American cities. You have had enormous sums and elaborate facilities for research. You have announced many discoveries. And yet people go on dying of cancer in increasing numbers. Therefore, we must turn this problem of cancer over to the business men; by the application of business methods and common sense they will deliver us from this scourge. If any of us were to speak in this wise, he would be held to be simply absurd. Yet it does not appear radical or visionary or absurd to suggest that legal and judicial experience and the lessons and warnings of legal history and the results of legal science may be thrown into the waste basket and the solution of delicate and difficult problems of adjustment of human relations and regulation of human conduct turned over to those whose experience and training are in wholly different fields.

Lawyers are not without blame for the prevalence of ideas as to lay competency to overhaul the law and achieve effective reforms by legislative formulation of the general will. With us, the lawyer's classical political theory is one of law as declared popular will. It does not distinguish the source of the law's authority from the formulating agency behind the law's precepts. It gives the impression that the words, "Be it enacted," suffice to justify everything that follows. On the other hand, our current juristic theory is historical. It holds that law cannot be made consciously or deliberately; it can only be found. It is skeptical as to the efficacy of conscious effort at improvement. It expects law to grow as spontaneously as language. It expects legal institutions to evolve themselves by the inherent power of the idea of right or idea of freedom, unfolding in human experience. In consequence, it transfers the reverence which is due to the legal order from that legal order to the precepts for the time being by which we seek to uphold it. It blinds lawyers to the ill functioning of those precepts. It leads them to overlook possibilities of doing things better



and achieving the ends of law more efficaciously with improved legal machinery. It tends to sanctify in their minds the details of legal precepts and leads them to assume that in touching any of these precepts, even on the most palpable grounds and for the plainest purposes, the legislator is endangering the social fabric. On the one hand, we have a theory which invites lay tinkering. On the other hand, we have a theory that decries professional activity to improve the administration of justice and leads the lawyer to assume an attitude of obstruction where he might easily take the lead in constructive exercise of creative activity.

It is worth while to recall that if lawyers have to their credit great achievements in the working out of a common law in England, and later in the adaptation of that common law to America and the reshaping of its materials to the requirements of life in the new world, they are chargeable with great mistakes in their attitude with respect to nearly every important movement for improvement in the administration of justice in our legal history. When common-law lawyers extol the jury it is well to remember that the author of the *Mirror of Justices* set it down as an abuse that Englishmen were no longer permitted to try issues of fact by battle but were driven by law to submit issues to a jury. When we look with pride upon the liberalization of the legal system by means of equity, we need to remind ourselves that when the jurisdiction of chancery was formative, it was bitterly resisted by common-law lawyers, and that when in this country, in the last quarter of the nineteenth century, the last of our commonwealths finally gave complete equity jurisdiction to its courts, the act was vehemently opposed by the most learned and eminent judge in the state—a justice of the Supreme Court of the United States—who prophesied many ill results, all belied by the event. When we claim credit for the development of commercial law at the end of the eighteenth and in the nineteenth century, and admire the effective strokes of Lord Mansfield to make straight the paths of justice in commercial affairs, we must not overlook that one of the most liberal of American lawyers resisted adoption of the common law for his state, as of the time of the Revolution, because of objection to what he



called "Mansfield's innovations." We must remember that the legislative reform movement in nineteenth century England, which is now justly taken to be a land-mark in legal history, was fought inch by inch by some of the ablest lawyers of the day and was regarded with abhorrence by lawyers whom the profession still reveres.

Our own relatively short history tells the same story. The Constitution of the United States is one of the outstanding documents of Anglo-American law. It is justly revered by the lawyers of to-day. But when it was first drawn and was submitted to the people for ratification, it encountered the most determined opposition from the leaders of the profession. The lawyers who favored it were young and of little experience or standing. Eloquent speeches against it were made by lawyers whose fame still endures. Moreover the grounds of their objection were that the instrument would be dangerous or even fatal to liberty; whereas to-day lawyers have come to recognize it as the chief safeguard of liberty. Again it is instructive to read what lawyers had to say when married women's acts were first proposed; what they had to say when statutes first gave rights to mothers with respect to custody of their children; what they had to say when homestead laws were first enacted and what they prophesied when common-law procedure was overhauled in the middle of the last century. To come to recent times, we need to compare with the foregoing the report of a group of eminent New York lawyers when a project for amendment of the state constitution, so as to admit of a workmen's compensation act, was before the people of that state. Truly, not the least warning of legal history is one against confident prophecy of disaster when changes are made in the law. The very spirit of the profession that leads to these prophecies is our best guaranty that they will not be fulfilled.

In law as everywhere else, we must rely upon those who know the problems to be met, know the materials with which they are to be met, know the art of the craft that will apply the materials, and know something at least of the experience of the past out of which those materials have been wrought. And yet, so long as lawyers persist in an attitude of juristic pessimism—so long as they decry the doing of things by laymen



and do nothing themselves—we must expect the public to strike out blindly in the endeavor to do the best they may, when bad situations arise and are suffered to continue. Ours is not the only profession which from time to time has had to be reminded that it is a practical profession charged with attaining practical results. Charlatans and quacks and miracle workers have more than once had to wake the medical profession from a period of pedantic dogmatic slumber. The military profession has been rudely awakened more than once when volunteer non-professionals have led the way while professionals were waging wars of the present with the tactics and armament of the past. It has happened more than once that a movement from the outside has led to advance in naval operations, when the professionals had become fixed in an obsolete routine. These things do not mean that we can put our trust long or much in the non-professional. In a highly specialized world the tendency is toward more rather than toward less reliance upon the specialist. There is the more reason, therefore, why the professional in every field should feel bound to look at his profession functionally. It does not exist for its own sake. It is a means toward human ends. How far it achieves those ends and how far it falls short and why, must be his constant study. And this will lead to study of how far it may achieve them better and by what means. Panegyrics upon law in the abstract, lectures on the Constitution, and exhortations to obedience of law, will do nothing in comparison with intelligently directed effort to ascertain how the law works, where it does not work and why, and how it may be made to work. Only when this has been done and done well shall we make enduring progress toward a régime of universal respect for the legal order.

Respect for law in the sense of respect for the legal ordering of relations and of conduct, which are at the foundation of civilized society, does not mean that particular legal precepts or particular legal institutions are to be beyond question. Law is the strongest agency of social control. It bears the brunt of the task of maintaining, furthering and transmitting civilization. This is a universal task. The task of particular precepts and particular institutions, on the other hand, by which we seek to maintain the legal order in any given time and place,



is relative to time and place and men and economic and social conditions. An inquiry into how far they are adapted to the time and place and men and economic and social conditions, is always in order. For, when we speak of the law as sacred, it is not the law as an aggregate of rules of law that we have in mind but law in the sense of the legal order. In truth, we may easily injure the legal order by regarding each item of the body of legal precepts for the time being as sacred. Sooner or later each particular precept will change or become obsolete or be superseded, and yet the legal order may remain unimpaired. The ambiguity of the term "law," that makes it easy to think of law as only a body of rules of law, is quite as much a menace to the legal order, on one side, as over-confident lay trust in legislation is upon another side.

If by "law" we mean the organized mass of materials by which justice is administered in the modern state, law is made up of three elements. First there are legal precepts—the element we have in mind when we think of law as an aggregate of laws. The analytical jurist has his eye on this element when he frames his theory of law as the command of the state. It is because the legislator has his eye exclusively on this element, and mistakes it for the whole, that he so often fails in his well-meant endeavors to make laws. In the application of the precepts he has devised so ingeniously and formulated so carefully, some things constantly come in to the result which his calculations had left out of account. Trained in a theory of law which also leaves them out of account, he is not unlikely to assume that dishonest or inefficient officials or a bad machinery of justice, or inherent bad tendencies in the legal profession, or a decadence in the morale of the people, or all these things, are chargeable with the miscarriage. But it is more than likely that the intruding and disturbing element is the law itself, into which his legal precept did not fit and to which it has had to be adjusted.

A second element of law is a traditional art of the lawyer's craft; a traditional technique of working out the grounds of deciding particular cases on the basis of received legal materials; a technique of applying legal precepts and of working out their limits and developing new ones to meet cases to which existing



precepts are not adapted or for which no precepts are at hand. This is the element we have in mind when we say that law is found, not made. The historical jurist has his eye on this element when he defines law as custom. This is the most enduring and most characteristic element in any system of law. It gave continuity to the legal system of continental Europe from third-century Rome to the present. It gave continuity to the common law from the time of Coke to the present, if not, indeed, from the Middle Ages. It makes English and American and Canadian and Australian lawyers conscious of living under one system, despite diversities in social, political, economic, and geographical conditions, and despite growing diversities in the legal precepts with which each is familiar. As compared with legal precepts, this is a universal element. It is his possession of this technique that makes it possible for the lawyer to effect results with what otherwise would be a bewildering mass of legal precepts. It is his ignorance of this technique, and his lack of appreciation of its rôle as an element in law, that, as a rule, makes the work of the lay law reformer so futile in action. But our theory of law ignores this element and it is not unnatural that its proper and inevitable operations are branded by the layman as judicial usurpation or as technical quibbles of the lawyer.

Third and no less important as an element of law is a body of received ideals of the legal and social order—a body of traditional ideals as to the end of law and of what legal precepts and legal institutions should be in view thereof. This is the element we have in mind when we speak of law as universal and rooted in the eternal verities. The philosophical jurist has this element in mind; and so he too tells us that law cannot be made, it can only be found. With his eye exclusively on this element, he thinks of legislation not as creative, but as a mere formulating process. The reality of law, as he sees it, is in this ideal element. Legislator and jurist and judge can do no more than give definite formulation to details drawn from this ideal picture of the whole. But this view of the third element as the whole is quite as mistaken as the analytical dogma that takes the first element for the whole or the historical theory that makes the second element the whole. To understand law, to



administer justice according to law, above all to make law, we must understand and take account of all three.

Legal precepts, the first element, are relatively transient. When I looked recently at the note books which I kept as a student at law school thirty-six years ago, this was brought home most forcibly. Then, imputed negligence was still full of life. Then, courts were still trying to put the law as to negligence into chapter and verse of detailed rule as to what was and what was not negligence *per se*. Then, it could be said with dogmatic assurance that, save for a few aberrant jurisdictions, the motive with which one exercised his *jus abutendi* was quite irrelevant. Then, the arbitrary doctrine of mutuality of remedy flourished in equity. Consider how recently the precepts and doctrines of the law of public utilities have superseded a pedantic law of bailments. Consider that as late as 1870 eminent lawyers were not sure that there was a law of torts. Consider how new is the "right of privacy." Consider what the advent of motor vehicles has been doing to the precepts of our law of agency. Then go back to the reports of 1825 and see what a century has done to the details of the old law of property, the details of the old common-law practice, and the statutes of the beginning of our polity, which are the staple of the decisions of that time. Then compare the legislation of England whereby the realty of a deceased passes to the executor with that of Oklahoma, whereby the personalty passes to the heir, and remember that each jurisdiction claims with good reason to live under the common law. The details of legal precepts, when looked at in the light of such phenomena, seem to be the least part of the law. No matter whether we frame them abstractly and universally or, on the other hand, adapt them minutely to the requirements of time and place, we must expect them to be shaped by the traditional technique to the requirements of the received ideals; and at best their life will be relatively short.

Lawyers rely upon the first element, legal precepts, to insure the stability of the legal order. Rigid precepts precisely defined, stiff procedural requirements, and formal legal transactions, are the means by which, in the past, we have sought to exclude the personal element in the administration of jus-



tice and so to maintain the security of acquisitions and security of transactions which are at the bottom of the economic structure. But the stability attained solely through rigid legal precepts is illusory. Interpretation, application, analogical extension and restriction, and all the other devices by which the traditional technique shapes them to the received ideals for the purposes of concrete cases, can leave the form of words unchanged while working profound changes in their operation and effect. The real guaranty of stability is not in the precept element but in the traditional technique. It is to be found in professional habits of mind, that lead courts to decide cases on the basis of known materials with a known technique, and thus put ascertainable limits to the process of molding precepts to the requirements of ideals. But it is just because this element is par excellence the conservative element in the law that we cannot ignore it in the legal science of a period of growth such as that upon which we are now entering. Not the least of the questions which American jurists must begin to study is the adaptability and adaptation of this technique to the administrative justice demanded by the urban industrial society of to-day.

Received ideals are both a stabilizing element and an element of growth. In the maturity of our law in the nineteenth century the ideal of a body of logically interdependent legal precepts deducible from a small body of universal legal principles, discoverable through comparative analysis of the common law and the modern Roman law, was a force for organizing and systematizing the legal material which had sprung up in the preceding era of growth. In the formative period of American law, from the Revolution to the Civil War, the ideal of a body of precepts applicable to the social, political, economic, and geographical conditions of the new world, and the ideal of free political institutions or a free government and of legal institutions and precepts adapted thereto, gave direction to the reception of English law as the common law of America and enabled us to make out of the materials of English feudal land law and English procedure a body of legal materials by which justice could be administered in a wholly different society and under wholly different conditions. In the seventeenth and



eighteenth centuries the idea of a body of legal precepts coincident with the precepts of morals, and binding because of their intrinsic moral force and their appeal to the individual conscience, was a liberalizing agency of the first magnitude and made it possible for the medieval English law to become the basis of a law of the world. This third element of law changes slowly. That it does change is seen readily when we compare the received ideals of the age of Coke, when lawyers still thought in terms of the relationally organized society of the Middle Ages, with the received ideals of yesterday, influenced profoundly by the classical economics, by the political ideas of the French Revolution, and by the identification of the immemorial common-law rights of Englishmen, as declared by Coke and Blackstone, with the natural rights of man. The controlling part which these received ideals play in judicial decision is made manifest, to give but one example, in every case in which courts are called on to apply to social legislation the constitutional guaranty of due process of law. That some change may be taking place is at least suggested by the common phenomenon of five-to-four decisions in such cases in the Supreme Court of the United States.

Because this element is potentially an element of growth, it may easily be a factor in impairing stability, as it obviously was in the stage of infusion of morals into the law in the rise of the court of chancery in England. A feeling that a moral principle, simply as such and for that reason, is a legal rule, while a powerful instrument of liberalization and of growth, may also operate powerfully to unsettle the administration of justice. Hence philosophy of law, which subjects this element in law to critical scrutiny, seeks to give it definiteness of outline, and makes jurists, judges, and practitioners conscious of what they are doing when they resort to it, has always flourished in eras of legal growth. It cannot be insisted upon too strongly that philosophical jurisprudence, so far from unsettling the administration of justice, as things are to-day, must be our chief reliance for removing a profoundly unsettling factor, or, at least, for minimizing its effects. The unconscious operation of the personal, naïve, uncritical, social, political, and ethical philosophy of the individual judge has become a conspicuous



feature of the administration of justice. In rural, agricultural America of the last century this philosophy was in substance the same for judges and lawyers throughout the land. Occasionally, political ideals of states' rights operated south of Mason and Dixon's Line, and certain ideals of an industrial society began to appear in New England and in Pennsylvania. To-day, conflict between the ideals of a rural, pioneer, agricultural society, which prevailed when our law was formative, and the ideals of an urban industrial society, may be seen beneath the surface in every volume of the reports. No amount of legislation, no amount of rigid legal precepts, will meet this situation. We must recognize that we have to do with an element in law that is of no less importance than legal precepts, and that demands scientific study no less than they.

Lawyers must learn what we have had to learn in every other practical field of human endeavor, namely, that pure science has the highest practical importance. Pure physics and pure mathematics in engineering, pure chemistry in technical manufacture, pure biology in medicine, pure botany in agriculture and horticulture, pure economics in business administration, and pure psychology in more than one of these, have demonstrated again and again that what seem at first to be purely scientific investigations devoid of all practical import, may yield practical results of the highest consequence. Nothing seems more empty than the discussions as to the nature of law which were the staple of analytical jurisprudence in the last generation. Yet I venture to think that a sound scientific theory of the nature of law, and consequent appreciation of the several elements that make up a body of law, will achieve for our constitutional law what can never be achieved by crude schemes for recall of judges, or recall of judicial decisions, or requirements of specified majorities of the tribunal, or any other device whereby questions of constitutionality are differentiated from everyday questions as to the law applicable to the case in hand. Nothing seems more academic than the attempt to construct a comparative anatomy of the law of Cloudcuckootown on the basis of analysis of English law and the modern Roman law, which has gone by the name of analytical jurisprudence. Yet its influence can be traced, through our text-books, both



as an influence for good and as one for ill, in the attempt to force our common-law materials into supposed universal categories drawn from the Roman law, which went on through the greater part of the last century. Even the metaphysical jurisprudence that prevailed on the Continent in the nineteenth century, at which Anglo-American jurists gibed, if they deigned to notice it at all, may be shown to have had important practical effects on the administration of justice in the United States, through influence on the historical school, and thus upon English and American law books upon which courts and lawyers have relied.

If the abstract legal science of yesterday could do these things for the stable law of the last century, how much more may we expect the functional legal science of to-day to do great things for the growing law of the urban industrial society of the present. Note the problems of American law as they confront every thinking lawyer, and the relation to each of them of a legal science which asks what the law seeks to do and how far it succeeds; which asks as to each precept and each doctrine and each institution what its part is or may be in attaining the end of law and how far it plays that part well or ill; which asks as to each precept and doctrine and conception how far we achieve justice by means thereof and how far we may use it more effectively; which tries all materials and all methods by the test of the results to which they lead in the endeavor to make social engineering through the legal order as perfect as may be in the time and place.

First among the problems of the day, by general consent, is the administration of criminal justice. To make the substantive criminal law, criminal procedure, organization of the prosecuting machinery, organization and administrative methods of the tribunals, and organization and administration of penal treatment, all of them fashioned for rural America one hundred years ago, effective for their purpose in urban industrial America, is a huge task. Just now everyone, unless it be the lawyer, has an infallible remedy. The enduring remedy must come through lawyers and will be one that lawyers must administer. The layman can but treat the symptoms. The things that operate behind the symptoms are too deep seated for



him. But the lawyer can do little until long continued, thorough, scientific research has given an assured basis on which to work.

Next only to criminal law is the problem of legislation. It is easy to decry legislative law making. It is easy to declaim against the "rain of law." But legislative law making is obviously the type of law making of the maturity of law. If we are inclined to scoff at it, we must remember that legislation solved the problem of workmen's compensation, when judicial empiricism failed, and that the exigencies of modern business preclude waiting for a slow process of judicial exclusion and inclusion to work out legal conceptions for many a settled practice of manufacturing and marketing. Just as the high powered motor vehicles of to-day require us to mark out the middle of the road upon the pavement and to mark out zones of safety and street crossings and turns, so the high pressure operations of modern business require lines to be laid out and limits to be defined and permissible courses of conduct to be indicated in advance by legislation rather than after the event by judicial determination of controversies. Legislation is something we must have; and yet admittedly it is most unsatisfactory in practice. How to make it take account of the legal background on which the courts will project it when they come to apply it, how to insure that all the interests involved have been, as it were, inventoried and valued and delimited so as to secure the most that may be with the least friction and the least waste, is a problem of social engineering calling for as great an equipment of pure science and as much creative resource as any problem of electrical or mechanical engineering that has been solved in whole or in part through the research carried on in our highly endowed laboratories.

Hardly less important is the problem of enforcing legal precepts. This problem has become acute in the United States because of recent legislation that tries our enforcing machinery at every point. But it antedates that legislation and is a serious one wherever a complex social and economic order requires legal precepts beyond those simple rules and standards, sufficient for the rural agricultural society of the past, the propriety whereof was apparent to every thinking man. The legal



science of the past knew of no such problem. To the analytical jurist the whole matter was one of executive efficiency. To the lawyer, it was enough that a precept had obtained the guinea stamp of establishment by the sovereign. The lawyer had nothing to do with enforcement. That was for the executive. If the executive did not make the precept effective in action, why then the executive was at fault. To the historical jurist the whole matter was one of whether the precept did or did not correctly express human experience. If it was a mere formulation of what had been discovered by experience, enforcement would take care of itself. It would be rooted in habits and customs of mankind and would be secure on that basis. If not, it was a futile attempt to do what could not be done and all attempt at enforcement would in the end prove vain. To the philosophical jurist, the whole matter was one of the intrinsic justice of the precept—of its appeal to the conscience of the individual citizen. If as an abstract proposition it was inherently just, its appeal to the reason and conscience of the individual would secure obedience from all but an almost negligible minority who persisted in going counter to their consciences and might have to be coerced. If not, the attempt to enforce an unjust rule contrary to the conscience of the individual citizen ought to fail and we need not feel badly if it did fail.

Such simple theories of enforcement fall to the ground under the conditions of the urban society of to-day. We learn quickly that efficient or inefficient executives alike encounter certain obstacles that seem beyond the reach of efficiency. We soon find that in such matters as traffic regulation, the general security requires us to make habits instead of waiting for them to develop by experience at the cost of life and limb. We come to see that the exigencies of the general security and of the individual life require us to prescribe many things the reasons whereof are not upon the surface and the justice whereof, clear as it may be to the expert, will not appear at once to every reasonable and conscientious citizen. Hence we have to deal with the subject of enforcement in new ways. We have to study the limits of effective legal action. We have to determine what we may expect to do through law and what we must leave



to other agencies of social control. We have to examine our armory of legal weapons, appraise the value of each for the tasks of to-day, and ask what new ones may be devised and what we may expect reasonably to accomplish by them when devised. Here, too, is an unexplored domain for the legal science of to-morrow.

Another problem of prime importance is preventive justice. Civil-law countries have gone much further than common-law countries in this matter, and England has gone somewhat further than we have. In too many American jurisdictions the only way to find out what a contract means is to break it. The appointed way to determine whether another has an easement over your land is to assault him when he tries to exercise it. The appointed way of learning whether a penal statute is or is not the law of the land is to break it and run the risk of going to jail if it turns out to be constitutional. In all our jurisdictions, we try a generation after the event the testamentary capacity and free action of a long-lived testator who steadfastly adhered to the dispositions of his will as first made. For the conduct of business and the conduct of enterprises we have come to rely upon administrative boards and commissions, which have been set up on every hand to guide us at the crisis of action, much as the traffic officer at the street corner tells us when to cross the street and when to stand patiently and watch the procession of motor vehicles roll by. For criminal law, juvenile courts have made a notable beginning. Yet it is not too much to say that preventive justice is another unexplored domain in which the legal investigator of the future may hit upon epoch making discoveries.

Still another field for research is judicial organization and administration. For we may not flatter ourselves that the standard American adaptations of the English judicial organization and administration of the eighteenth century is something that will stand fast forever. It was an ingenious adaptation to the society of the time. It is already an anachronism in the huge urban community of to-day.

Finally, there is the problem of individualizing the application of justice in that part of its administration in which it has from the nature of things to deal with unique situations. There



is nothing unique about a given promissory note or a given estate in land or a given conveyance. Promissory notes may be printed in blank and it remains only to fill in dates, amount and signature. Conveyances may be made upon blanks in the same way. But there is no such thing as a blank automobile accident or a blank railway accident or a blank outline of unfair conduct of a fiduciary, or a blank outline of reasonable conduct of a public utility. In the past we have tried at one time to deal with all cases after the manner of promissory notes or conveyances of estates, and at another, by way of reaction, to treat all cases as if they were cases of human conduct. It is not the least problem of modern law to find out how to apportion the field between rule and standard, between logic and discretion, between treatment of cases in gross and individualized treatment of unique cases or unique elements in cases, so as most completely to achieve the ends of the legal order.

Such are some of the major tasks that confront the American lawyer to-day. If they had to be performed by the courts unaided or by the practicing lawyers unaided, I might despair of any enduring results in such time as it is reasonable for us to call upon the laity to wait. It might be a lesser evil to turn things over to the business man and the worker for an off-hand application thereto of their common sense. The dockets of courts are too heavy, the view of these problems which any court may get is too fragmentary and its experience is too specialized or too local to make it possible for courts to do for this time the sort of thing they did so well in the formative era of our legal institutions. Likewise, the work of the practitioner of to-day is too specialized, and he is too much engrossed with the management of enterprises and the practical guidance of business to be in a position to contribute more than an occasional ingenious detail to the solution of these problems. Nor do I hope for much, as things are, from the suggestion of a ministry of justice. We are not likely to set up a ministry so free from political pressure, so competently manned, so animated by pure zeal for the advancement of justice, and so filled with scientific spirit, as to compel the confidence of legislatures and people and insure that its recommendations be worthy of adoption. Even less may we rely upon occasional legislative commissions



or upon the intermittent and hurried labors of judiciary committees.

Our best reliance, as I venture to think, must be upon our national law schools. In these institutions we may find the permanence of tenure, the conditions of work—continuity, opportunity of dealing with problems as a whole, possibility of surveying a wide field, extending beyond the limitations of jurisdictions and localities and parties—the independence of politics, and the guaranties of training, ability, and scientific attitude, which are essential to effective research and which will command public confidence. Were legal research in such institutions endowed as is every other form of research in American universities, were it possible for legal scholars to take time from teaching to devote themselves to the furtherance of justice according to law by conducting the investigations upon which effective reform must proceed, we may be confident that the results would be no less far reaching and no less salutary than those which have flowed so abundantly from the lavish endowment of medical research. What research has done for the prevention and cure of disease, what it has done for engineering, and the technical arts, and agriculture, and business administration, it may yet do for the law. In no way may the lawyer be so sure of achieving his task of making straight the paths of American justice, as by doing his part to assure to our law schools the means of carrying on the scientific investigations on which the law reforms of the future must go forward.



# SAMUEL REA

## AMERICAN TRANSPORTATION

Samuel Rea was born in Hollidaysburg, Pennsylvania, in 1855 and began his connection with the Pennsylvania Railroad in 1871 as constructing engineer. Except for an intermission from 1875 to 1879 when he was connected with other railroads he served continuously on the Pennsylvania Railroad until his retirement from the office of president in 1925. The following address is an interesting and authoritative survey of the great business of transportation in the United States. It was delivered before the American Society of Mechanical Engineers at its National Regional Meeting held at Altoona, Pa., October 6, 1925.

I DEEM it an especial honor to speak before this distinguished body upon the development of the transportation industry of our country. The growth of American railroads, the unrivaled perfection which they have reached, both in standards of construction and performance, and the part which they have played and are playing in the progress of the Nation, rank among the most important achievements of the engineering professions—achievements, moreover, to which every branch, civil, mechanical, electrical and chemical, has contributed its share.

In equal degree the history of our railroad evolution and growth stands as a preëminent tribute to the foresight, courage and enterprise of American business men, financiers and the investing public, because their functions in the creation of our matchless rail highways have been no less vital and fundamental than have those of science and the technical professions.

The hundredth anniversary of the establishment of transportation by steam railroads is being celebrated this year in England. The date usually fixed for the initial operation in this country is 1827, so that the American railroad industry is now 98 years old. My own personal experience dates from



1871, a period of 54 years. It has, therefore, been my privilege and opportunity to have observed, in active service, the progress and advance of transportation during more than half of the entire world history of railroad development, and that period, of course, covers far more than half of the evolution of steam railroads into the highly perfected instruments of public service which we know to-day.

I may add, as perhaps an interesting reflection upon how fast the world moves and how much can be compressed into the experiences of a single lifetime, that I completed a quarter of a century of railroad work before motor cars were ever heard of by anyone except a few experimenters who called them "horseless carriages," and over one-third of a century before flying by mechanical power was anything more than a dream which most people thought impossible of realization.

After the progress I have seen with my own eyes, merely in the transportation field alone, I would consider any man extremely rash who would attempt to set a limit to the possible further achievements of the engineering professions and of science in general toward the continued advancement and betterment of humanity.

The subject which has been assigned to me, "American Transportation," covers so vast a scope that in a brief talk it is possible to do little more than merely touch upon the most outstanding facts and indicate a few of the principal milestones in the road of progress.

While it is true that railroads had their start in England, they have had by far their greatest and most important development here in the United States. Indeed, the story of American railroads has been written large and boldly upon practically every page of our Company's history; while as factors in the economic life and advancement of the people, and in our national progress, the importance of the part which they have played has not even been approached by the railroads of any other nation.

The total railway plant of the world embraces at the present time something over 600,000 miles of line. Of these, some 260,000 miles, or not far from 40 per cent, are within the boundaries of the Continental United States. As we have only



5 to 6 per cent of the world's land area and population, it is therefore evident that we have some six or eight times as much railroad plant per capita, here in America, as the world's average.

Our use of railroad facilities per capita is on even a larger comparative scale. The average American citizen, for example, utilizes from four to five thousand ton-miles of railroad service per year. That is to say, the railroads of America transport a ton of freight that many miles for each man, woman and child in the country. Compared with this, the average citizen of Great Britain uses 300 ton-miles or less; of France, perhaps 400 ton-miles; while the pre-war German consumed some 600 ton-miles of rail service annually. This means that the per capita use of railroad service in America, measured in ton-miles of freight service, is from seven to fifteen times as great as in the most highly developed countries of Europe, and if we took the world average, including the less developed countries, the comparison would naturally be still more striking.

The difference, of course, is explainable largely by the relatively great distances in this country between the sources of raw material, the centers of production and the centers of consumption, coupled with our highly developed system of specialized mass industry. It measures the extremely high degree of our dependence upon railroad transportation, not only for the state of national progress which we have already reached, but for its day-to-day maintenance and for the continuance of our progress in the future.

Mechanical transportation, as afforded by the railroads, opened up the whole vast territory embraced within our National boundaries to settlement and development, and did so with a rapidity never known before in human history. It continues to be the principal physical means by which the economic life of the entire nation is sustained and the continuity of its commerce, industry and agriculture, and every form of social activity insured.

No one can be more willing than myself to recognize the advent of other forms of transportation or to appraise liberally their value and importance. I am, however, profoundly convinced that their eventual effect will be greatly to increase, and



in no sense diminish the vital importance and necessity of the railroads. Motor transportation, it is quite true, has already required extensive changes in railroad methods and practices, and in conjunction with air transport may not improbably bring about still further changes of important character. It is, however, my firm belief that, as the basic carriers of the Nation, the railroads will indefinitely retain the position of fundamental supremacy and importance.

The railroads of the United States as they stand to-day represent on their books an investment in physical property—that is road and equipment—of some twenty-two billions of dollars. The progress of physical valuation by the Interstate Commerce Commission, thus far, gives every warrant for expectation that these book figures of original cost will be much more than sustained. It is very questionable whether these great properties could be produced anew to-day, under existing conditions, for double the sums at which they are carried upon the balance sheets of their respective corporations. The real value of the railroads to the country as a whole is totally incapable of expression in dollars at all, for the reason which I have just stated, viz., that they are an absolutely indispensable instrument for the carrying on of the daily life and commerce of our people.

The capitalization of our railroads, an entirely distinct thing from cost or physical valuation, is much less than the investment figures. The total amount of railroad stocks and bonds at present outstanding in the hands of the public is only some seventeen billions of dollars. The difference between that sum and the figure of twenty-two billion dollars for investment in physical property invites attention to the vast degree of undercapitalization, the very reverse of “water,” which is characteristic of the financial structure of American railroads as a whole. This difference or “spread” will be increased rather than diminished when the Federal valuation work is completed.

It is safe and conservative to say that there is no other great form of industry or enterprise in the world which has been built upon a sounder financial basis, or which possesses greater fundamental strength and integrity in financial structure, than characterize our railroads. Should the solvency of these vast



properties as a whole ever be threatened, the cause will not lie in any flaws or weaknesses inherent in themselves, but rather in elements beyond the control of their managements, such, for example, as a long continued abuse of the governmental power to regulate rates, and encroachments on the duties and responsibilities of directors. Such a disaster, however, I hasten to say, has in my opinion no longer the slightest likelihood of occurring. I am glad to voice my belief that we are past the principal crisis with respect to the difficulties and errors of governmental regulation and are definitely on the way to a condition in which constructive and helpful policies will distinctly dominate the regulative field.

A steady improvement in the spirit and purpose of regulation has been quite evident in recent years, and more particularly since the termination of the temporary war-time control of the railroads. It can reflect but one thing; that is, the more friendly attitude of public opinion arising through the widespread better understanding of railroad problems, and of the vitally essential character of railroad service, which has come about so largely in the last decade.

Personally, I have never believed at any time that railroad baiting was really popular in the sense that it represented the will or wishes of a majority of our people. For a long period, however, the friends of the railroads—those who understood and appreciated their value and necessity—were inarticulate. Only their professional enemies, those who thrived and made political capital by attacking “big business” and success, made themselves heard. Happily, all that is now profoundly changed. The public has been thoroughly aroused to the dangers of harsh and repressive regulation of the railroads, and has manifested unmistakable impatience and resentment at any tendency toward continued abuse and injury of these great public servants, for the purpose of furthering political ends or personal ambitions.

But, gratifying as is the change we are witnessing in these respects, it will never do to forget that railroad regulation is still far from perfect, and that we have a long way to go before it can be regarded as upon a truly sound basis. We cannot shut our eyes, for instance, to the fact that the provisions



of the Transportation Act of five years ago, requiring the establishment of rates which will yield a fair and reasonable return upon the value of the railroads as a whole, have never yet been fully carried out. Not even the inadequate return of  $5\frac{3}{4}$  per cent tentatively set by the Interstate Commerce Commission, has yet been realized.

In my opinion two things are required in this regard. One is to raise the contemplated rate of return to a materially higher figure than has yet been set. Does not that certainly seem justified in view of the fact that returns of 7 and 8 per cent on such utilities as gas, electric light and traction properties have repeatedly been declared reasonable, and that such institutions as national banks, which were under governmental regulation and supervision long before the railroads, are permitted and encouraged to earn returns far higher still?

The second requisite, after having raised the proposed return to an adequate level, is to instill into our regulative bodies the confidence, courage and initiative necessary to make such return a reality. When, and if, that is done—and it will have to come gradually—railroad management will be unfettered, and will be again in a position to exercise its true functions properly, and what we call the “railroad problem” will cease to trouble the American people.

The question all harks back to further education and enlightenment of public opinion, and to increased insistence by the business and professional circles of the country, upon recognition of the fact that our national prosperity in the long run can only rest fundamentally and soundly upon the basis of progressive and prosperous transportation.

General Atterbury and Mr. Lee have already mentioned the fact that this Society held its Third Annual Meeting here at Altoona in 1883, or 42 years ago. In joining them to extend to you a welcome back to this great seat of the mechanical engineering profession, as applied to railroad work, it occurred to me that possibly you would be interested in a very brief reference to some of the general trends in railroading which have taken place during that interval.

Forty-two years ago the pioneering era, at least in the East, was nearing its end and our railroads were considerably more



than one-third built, in so far as length of line mileage is concerned. The progress which has taken place since that time has largely consisted in steadily continued improvement of the plant, such as additional line and tracks and enlarging old and building new yards, and in the more intensive and concentrated use of facilities. This, of course, has been particularly true in the last ten or fifteen years, during which the construction of new line has been only very slight, while the additions to the previously existing plant have been enormous.

Summarizing the developments which have occurred since your last meeting in Altoona, I may point out that in the forty-two years line mileage has increased about 150 per cent and the capital has about tripled, while the use of facilities, or volume of railroad service rendered, measured in ton-miles and passenger-miles, has been approximately multiplied by ten. The freight train miles have less than doubled, but the tons per train have been multiplied by four, and the length of the haul for each ton of originating freight considerably increased.

These comparisons, in necessarily very round figures, outline the story of railroad development in the last four decades. They reflect, of course, the achievements with which we are all familiar—far more powerful locomotives, larger and stronger cars, and longer trains, together with heavier rails, improved roadbed, strengthened bridges, larger yards and improved structures generally, necessary to handle mass transportation on a constantly growing scale. In all of these achievements the railroads of our country have led and are leading the world, which accounts for the fact that we have the cheapest rates, the best service and at the same time pay the highest wages.

Looking to the future of American transportation, we have several controlling factors to consider, and, if we are to form accurate conclusions, must properly interpret their reaction and interaction upon one another.

The first of these factors, in my judgment, is that the present mileage of our railroads covers pretty thoroughly those portions of the country most desirable and readily adapted to economic exploitation, *i.e.*, the portions naturally suited to agricultural, industrial or mineral development, and to the support of large



centers of population. It is true that there still are great areas within the national boundaries not traversed by rail lines. Examination, however, will show that these consist almost entirely, if not altogether, of the very rugged mountain regions or desert and semi-desert sections. Practically all of the naturally arable land of the United States, and a very large proportion of that capable of development by irrigation, is now accessible by rail. That is true also of our timber lands and of most, if not all, of our valuable mineral deposits, including coal and oil. Indeed, as we are well aware and should not hesitate to acknowledge, some of the latter are doubtless developed at the present time beyond needs immediately in sight.

We, therefore, have a picture of a great nation already liberally supplied with lines of railroad communication readily adapted to such further development as the progress and growth of the country may require. A glance at any railroad map will confirm this viewpoint.

The second factor broadly bearing on the transportation future is the motor vehicle. As a railroad man, I have not the slightest fear in admitting that for many purposes motor cars are capable of furnishing short-distance transportation to better advantage, and with greater economy and efficiency, than by rail. The country as a whole, however, I think is coming to the realization that the motor car's true function, especially as a commercial carrier, is chiefly as a feeder of the railroads and as a connecting link between the existing rail lines. Save in rare instances, it is, and must indefinitely remain, a far less efficient, less satisfactory and less economical instrument than the railroads for long-distance or bulk transportation of either passengers or freight. Incidentally, I wish to express the further view that, in the long run, motor cars, through the vastly increased business activity, which they have brought about in so many directions, will create for the railroads much more new traffic than they will ever by any possibility take away through direct competition. Indeed, they have been doing this ever since they became an important influence in the manufacturing and transportation fields. The real problem as between railroads and motor cars is not one of competition but of co-ordination, to the end that each of these agencies of transporta-



tion may be free to develop and progress in its proper field, and in that manner best serve the public needs.

The third factor for consideration is air transport, still largely an unknown quantity. If I were to hazard a guess, however, it would be that its commercial development, as an agency of passenger service will, for at least a long time in the future, be confined to very high grade de luxe transportation for people willing to pay necessarily high rates in return for exceptional speed, the saving in time and the novelty and distinction of a mode of travel open only to the few.

As a carrier of goods, air transport is quite likely to develop, on a considerable scale, in the field of high-class mail and express, and perhaps certain forms of very valuable freight. In all of these respects it seems to promise the creation of a new super-luxurious transport field of its own rather than to threaten a very serious invasion of the fields already occupied by the railroads. Nor should we lose sight of the fact, which is now pretty clearly established by the experience in Europe to-day, that in the stage of evolution now reached or in sight, extensive air transport is, at present, only possible on a commercial basis when aided by government subsidies or guaranties.

Considering these three physical factors, which I have indicated—namely, the present broad development of the railroads, and the probable effect upon them of motor and air transportation—I am therefore inclined to think that we are unlikely ever again to see any very rapid increase in the existing line mileage of the railroads. In fact, as I mentioned a few moments ago, extension of line mileage has been practically at a standstill for some years past.

This, however, is very far from meaning that we are approaching the end of railroad betterment and improvement. On the contrary, the field for advancement is to my mind greater than ever before. There is almost unlimited opportunity, and not only opportunity but need, for the continuance, on a greatly augmented scale, of the intensive development of the established lines. Millions of dollars will be needed, and are needed now, to provide the additional double tracking which nearly all systems require, and the quadruple, sextuple and even higher forms of multiple tracking which to a constantly greater extent



our important trunk lines are certain to need in order to keep up with increased production and with the constantly growing commercial activity and more frequent travel which are so characteristic of the business and social life of the country.

New, enlarged and improved passenger stations are needed at this very day for many communities, both large and small. Many more will be required as time goes on. Curvature should be eliminated on important lines, bridges strengthened, grades lowered, and the work of separating grade at highway crossings be continued with a fair and reasonable division of the expense between the railroad affected and the community benefited. Although locomotives have been vastly improved, particularly in the last two decades, there is still a great field for further progress in this direction, and equally so in the further adoption of improved operating methods, which will enable us to make better use, at all times, of the available motive power. Last, but by no means least, there is the great and, as yet, little touched field of electrification, which in future years should, and will, be extended where conditions economically warrant that step.

It is, of course, needless for me to say that no program of progress can be realized at all without adequate funds, and that brings us back once more to the fundamental problem of railroading, which is that of stabilizing credit by raising the investment return permanently to an adequate level, which of course means increasing the net earnings. In the last fifteen years the return on property investment in the railroads of the United States has barely averaged 4 per cent. Only once has it risen to 6 per cent and on one or two occasions it has very nearly approached the vanishing point. The great task and duty of regulation is to improve that condition, and our regulative authorities, if they are to have the courage to do so, and if they are to pursue a constructive course, require absolutely the strong backing of public opinion, and particularly of our business men and of the professions identified with transportation. It is no more than just to add that the regulative authorities, on their side, quite properly require from railroad managements continued efficient operation, and the rigid elimination of all waste. Happily, as I stated a few moments ago, I believe



the situation warrants genuine optimism, and is far more encouraging than at any time in our generation.

To summarize, therefore, my view is that the future physical development of American railroads will center upon a vast program of intensive improvements and betterments, with ultimately what may amount in some instances to almost a complete re-building of the existing plant, while extensions into territory not yet occupied by rail lines will go ahead very slowly, if at all.

Communication between the existing rail lines, as well as in territory not now served by them and not warranting rail extensions, will, I believe, be chiefly taken care of by motor cars on improved public highways.

Lastly, for those who have the price to pay, air transport will establish new straight lines from city to city, and doubtless across both the oceans which wash our shores.

Incidentally, I expect to see the last vestiges of commercial traffic on inland canals disappear from the United States, and all fanciful projects for canalizing rivers not naturally navigable relegated to oblivion. In a nation so plentifully supplied with railroads with their exceptionally cheap rates, for the service rendered, having practically a motor car for every family, and holding the pioneer honors in the art of flying, such a slow, cumbersome, easily interrupted, expensive and inefficient method of transportation as is afforded by artificially constructed and maintained inland waterways—often closed for half the year by climatic conditions—can no longer have a real place.

Coördinating the various forms of our permanent agencies of transportation will be a gigantic task, but one not impossible of solution, especially in light of the new views now prevailing, which, unfortunately, have completely reversed the old theories once held as to the danger of permitting mergers or consolidations. In the railroad field, consolidations are now declared by law to be the national policy, where once they were largely forbidden. At one period we worshipped enforced competition as a fetish. Now we know that competition has only such value as practical experience may demonstrate, and is now largely confined to service.

Personally, I believe that a proper degree of competition is



and will continue to be necessary among the railroads themselves, as well as between the railroads and the other agencies of transportation. This is a requisite if we are to keep the spirit of initiative and invention up to the highest pitch, and so render possible the continued progress of the transportation art. But competition which merely means useless duplication of facilities and service is a waste, the cost of which is ultimately borne by all users of the service, in addition to which investors in the long run usually suffer partial or total destruction of their capital.

I have publicly stated many times, and take this occasion again to say, that I am thoroughly in sympathy with the general proposition that it is desirable to concentrate our American railroads into a comparatively small number of large systems. As a matter of fact, in my experience on the Pennsylvania Railroad I have been engaged in effecting many mergers and consolidations, extending over a long period of time. By them we have throughout the life of the Company succeeded in bringing down the total number of active companies which have in the past aggregated something over 600 to approximately 70. So, you may see that our Company, and I personally, have advocated and practiced consolidation for many years, in so far as State and National laws permitted.

I am, however, definitely opposed to any movement looking toward putting consolidations into effect on an arbitrary or forced basis; or to any thought that intelligently planned, conservatively financed and properly managed railroads should be penalized by being made to bear the burden of losses incurred in the operation of lines which, perhaps, should never have been constructed at all. In this connection, I heartily commend the views of President Coolidge and the stand which he has taken upon this subject, and has made known through the columns of the newspapers, which is, briefly, that voluntary and permissive consolidations, with the encouragement and assistance of the Governmental authorities, and coupled with proper safeguards for the public interest, constitute the sound and proper method of procedure.

In conclusion, it has been a pleasure and honor to have this opportunity of assisting in welcoming the members of your



great profession to Altoona, which I think I may say is the world's leading center of mechanical engineering, as applied to the industry of transportation. Altoona, ever since it was founded 73 years ago by our Company, has symbolized mechanical progress on the Pennsylvania Railroad, and I may fairly add, to very large extent on the railroads in general.

This City and our Company are to-day the hosts of your Association and profession. Engineering and transportation in general have alike made vast forward strides since you last met here, 42 years ago. We are proud indeed to have you as our guests again, and trust that this occasion may be long and pleasantly remembered in your organization's history and may serve to cement still more closely the bonds which have always existed between the profession of engineering and the Pennsylvania and other American railroads.



# JAMES A. REED

## TOLERANCE

James A. Reed was born near Mansfield, Ohio, in 1861, was admitted to the bar in Cedar Rapids, Iowa, in 1885, and moved to Kansas City, Missouri, in 1887. Since then he has won high distinction as a lawyer and has been actively engaged in state and national politics. He has been United States Senator from Missouri since 1911. The following speech was delivered in the Senate on January 18, 1927.

MR. PRESIDENT: It was the familiar statement of the late Senator Lodge—a statement which was but a quotation from others who had preceded him—"that partisanship terminated at the boundaries of the country." At that point political advantage and political animosity must be buried in a common desire to protect the interests of our country. That was a wise and proper philosophy and one we should observe to-day.

I hold no brief for Mr. Coolidge or his subordinates; I have criticized the President as freely upon this floor and elsewhere as have others; but in the difficult situation that now presents itself I do not propose to interfere with the efforts of the Executive to protect the interests of the United States until and unless it becomes manifest that he is pursuing a dangerous course. I do not want to weaken his hands in the effort he is making peacefully to settle the controversies which exist between this country and Mexico. Sir, I do not believe we are in danger of war with Mexico, unless it is stirred up by intemperate speeches and intemperate articles in newspapers.

We have, as a Nation, a very great responsibility. We have said under the Monroe Doctrine that no foreign government shall establish itself upon this hemisphere; and while it is not written in the Monroe Doctrine in words, as we have construed that doctrine, we, in effect, warn the nations of the Eastern



Hemisphere that they must not undertake the conquest of countries on this side of the ocean.

If we assert that doctrine, a certain responsibility flows from it. Other nations have interests in the countries to our south, and have a right to protect those interests if we do not see to it that reasonable protection is afforded. So the responsibility falls upon us; and if we do not accept that responsibility, and other nations call upon the United States to preserve their property and protect their rights by keeping some kind of a civilized government in existence, European powers will proceed to protect their own interests. Should they do so, we may have a real war, a war that will tax every resource of our people.

We have, therefore, a difficult and delicate task, one which requires negotiations and frequently great patience. Mr. Wilson was criticized bitterly for his policy of "watchful waiting" in Mexico. Mr. Wilson was right when he sought so to conduct affairs that we would not become really engaged in a war, although we were obliged to invade that country.

Mexico has not in all respects kept faith with us. I desire to see her keep faith; but I am not unmindful of the fact that when our Government seeks to accomplish the acknowledgment and fulfillment of Mexico's obligations we have a difficult and delicate problem before us, and I am willing to give the administration a fair chance to work out that problem. If the administration is pusillanimous, if it makes no show of real earnestness, it will be criticized. If it makes a little show of earnestness, the cry is at once heard "there is going to be war."

Mr. President, there is not going to be any war with Mexico unless Mexico forces that war by violating the rights of the United States of America. I do not believe that any man connected with the administration has the slightest notion of engaging in a war because of the religious differences in Mexico.

We may regret these differences; we may look upon them with horror; but I undertake to say that we will not violate any principle of international law in order to make war upon Mexico. Nevertheless, firm policy with Mexico is necessary.



On entirely different grounds trouble may arise; but Calvin Coolidge is not going to march an army into Mexico because of a controversy about religion, and Congress would very likely balk the attempt should it be made.

There is in Mexico undoubtedly a condition, a lamentable condition; there is unquestionably brutal mistreatment not only of the Catholic Church but, I think, of all other churches that have established themselves there; but that is a question for Mexico. It is not for us. I think that is the sentiment in the hearts of the great Catholic population of this country, as it is of the non-Catholic population. There may be here and there a Catholic who takes an extreme view, as I believe if any Protestant denomination found the brethren of its faith being persecuted there would also be some of them who would take an extreme view. These things are natural; but if they exist in sporadic instances no general indictment of the Catholic Church is thereby justified; no attempt should be made to arouse prejudice against these good citizens. There has been much of that kind of appeal made in the last few years. It is a shameful appeal, by whomsoever made or wherever made. It is not a new thing. It has broken out periodically throughout the entire story of our national life.

Mr. President, I do not know that we shall gain anything by prolonging a discussion of this kind. I am sorry it has occurred. So that I may remove all taint of suspicion that I speak from interested motives, I remark that I was born and reared in the Presbyterian faith; that my ancestors signed the original covenant of the Protestants of Great Britain; and that I have not a relative on earth that I know of who is not of the Protestant faith. Neither, sir, am I a member of the Ku Klux Klan; I hope if there be a little remnant of loyalty left that is not completely absorbed, a little love of country that does not all emanate from and repose in a single breast, that in common with the other members of this body I may be credited with at least a small degree of patriotism.

I have friends of the Catholic faith; I know many priests of the Catholic Church; I know three or four bishops and one or two archbishops; and I join the Senator from Maryland [Mr. Bruce] in the statement that no living Catholic has ever ap-



pealed to me to raise a religious dispute, to seek to stir up animosity, or to provoke war with Mexico.

A Catholic signed the Declaration of Independence along with Protestants. Catholic and Protestant, Jew and Gentile, marshaled under the banners of George Washington. Catholic and Protestant, Jew and Gentile, died on every field of the Revolution.

Catholic and Protestant, Jew and Gentile, manned the ships of 1812, fought throughout the war, touched elbows behind the cotton bales at New Orleans, and mingled their blood in one common stream that victory might glorify American arms.

Catholic and Protestant, Jew and Gentile, bore our flag across the plains of Mexico and planted it in glory above the castles of the Montezumas.

Catholic and Protestant, Jew and Gentile, in the fratricidal war of 1861 rallied to the standard of the South and rallied to the banner of the North, according to the sectional lines that divided them, and with equal gallantry and courage laid down their lives upon the gory fields of that awful struggle.

And, sir, when the war with Spain came, Catholic and Protestant, Jew and Gentile, rushed to the colors and charged to death amidst a storm of Spanish bullets. On all these gory fields the Protestant nurse and the Catholic sister alike ministered to the dying and cared for the wounded. Bending above the bodies of soldiers whose souls were departing was the Catholic priest with his cross and likewise the Protestant minister with his Bible.

Then came the last Great War. We saw the soldiers as they were called from farm and factory, from office and university, from cabin and from palace. They did not come, sir, as Catholics or Protestants, as Jews or Gentiles, they came as American citizens.

They marched away with the same manly stride, with the same gleam of courage in their eyes, the same hot flame of patriotism burning in their hearts—Jew and Gentile, Catholic and Protestant. On the gory plains of France they fought and died together—Jew and Gentile, Catholic and Protestant. Amidst the storm of shot and shell, through fogs of deadly gases, Catholic boys bore from the field the torn bodies of



Protestant comrades, and Protestant boys with equal fortitude gathered the helpless bodies of Catholic boys in their arms and carried them to safety.

In camp and field, in trench and hospital, the Young Men's Christian Association, the Salvation Army, the Knights of Columbus, and the Jewish societies labored in coöperation to ameliorate suffering, to assuage pain. Catholic priests and Catholic nuns, Jewish rabbis and Jewish nurses, Protestant clergymen and Protestant nurses, together with physicians of all religions and of no religion, with equal tenderness and heroism alleviated the hardships of the field and the agonies of the hospital.

There came the day of peace. The brown columns began the return march. The gold-star mothers gathered to gaze at the gaps once filled by their gallant dead. So they stood, Jewish mothers and Gentile mothers, Catholic mothers and Protestant mothers—the same pain in their heart, the same tear in their eye. The gallant survivors heard the silvery music of welcoming bands; the cheers of mighty multitudes that rose and broke like the waves of a vast ocean—cheers for the soldiers of liberty. In that moment the returning heroes found some compensation for their sacrifices. Their bosoms thrilled with pride that they had helped to save and sanctify our flag, every star of which proclaims liberty for all, equality for all, justice for all, the right to worship God according to the dictates of conscience.

They were mustered out. Yet they had scarce turned their faces toward their homes until the Catholic soldier heard the serpent hiss of proscription and saw men massing who proposed to proscribe and persecute him because he worshiped God according to the tenets of his church.

If my country means anything to me, sir, it means that its Constitution is broad enough to protect every man in the right to his faith, every man in the right to his opinion, every man in his liberty of speech, in the right of peaceable assemblage, and in his privilege to print his honest thoughts.

If this country is to live, then these fountain springs bearing the pure waters of liberty must not be polluted with the poison of hate, covered with the slime of proscription, or polluted by



the spirit of intolerance. Intolerance, sir, is the child of ignorance. Give me the radius of any man's intelligence, and I will describe the circumference of his tolerance.

It is useless for the Senator from Alabama to shout, "I do not bring in religion." He has brought in the question of religion; he has thrice brought it in.

No good purpose is to be served. No informed person believes that the great body of our Catholic people are trying to drive us into a war with Mexico on account of religion.

I do not want to make this a personal matter. All I desire to say is that religion itself condemns these persecutions. The spirit of religion, of real religion, is that of tolerance. Bigotry has no place beneath the spire of a Protestant tabernacle, under the cross of a Catholic church, or within the walls of a Jewish synagogue.

Tolerance and good will, charity and kindness—these are the four angles that encompass the temples of real religion. We ought to have some of it everywhere and always.

This much I desire to say, that if it were for me to decide, I would do as we did when there was persecution of the people in Ireland. I would use the good offices of the Government to stop persecution in Mexico. I would equally do so were the persecution directed against the Protestant churches of Mexico; I would do so even if a portion of the Mexican people were being oppressed and slaughtered. Scores and scores of times our Government has protested against wrongs and cruelties in foreign lands. Scores of times we have expressed sympathy for the unfortunate. Scores of times we have tendered our good offices without danger of war and to the credit of Christian civilization.

Mr. President, I may have angered my friend; I do not want to. I merely say that when we are forced to discuss religious questions in the Senate, he who begins the discussion must accept the responsibility. They were not here until the Senator from Alabama spoke. Of course, he has the right to protest against war. We all can protest against war. We are all against war. But against the ground of his opposition I protest and object.

In conclusion, permit me to issue this warning: War may



be produced by improvident acts and foolish agitation. Incendiary editorials and inflammatory speeches made in this country will be repeated in Mexican papers and accompanied by like recriminations. The Mexican articles may then be reprinted in the United States, accompanied by still more denunciatory utterances. So the process of stirring up hatred, suspicion, and fear may be carried to such a degree as to produce a demand for war. More than one great war has been caused by similar processes. At such a time as this, patience, forbearance, and calm councils, accompanied by a spirit of fairness, ought to prevail. Such a course will in all probability avoid any serious trouble with the Republic of Mexico. An opposite course is full of menace.



# WILLIAM Z. RIPLEY

## 5

### CONTROL OF CORPORATIONS

William Z. Ripley is one of the most eminent economists in the United States. He was born in 1867 and has been professor of political economy at Harvard since 1901. He is an authority on railroad finance and organization and has published many books and reports on these subjects. The following address attracted much public comment because it called attention to a new and striking condition of the conduct of corporations. It was delivered before the Academy of Political Science in New York, January, 1926.

Two changes in the nature and conduct of corporations, characteristic of the post-war period, have a direct bearing upon the future of private business in its relation to the supervisory or regulating agencies of the state. They are both bound to increase the likelihood of an extension rather than a lessening of the powers and activities of such bodies as the Federal Trade Commission. Fundamental these changes are, inasmuch as they strike at the very tap-root of our capitalistic system. For this system is founded upon the theory that the private as distinct from the common, ownership of property best conduces to the public welfare, because such possession involves the giving of a gage or guarantee by the owner to his fellow-citizens for thrifty, efficient, far-sighted and public-spirited management thereof. His is the reward if he be successful. And he bears the loss in case of misdirection. Otherwise stated, it is the fundamental principle, interwoven throughout all human relationships, that power and responsibility must ever be yoked together. It is because these two developments directly assail this principle that I hold them to be sinister and of grave public import.

The first of these changes is the divorce of the ownership of property, represented by securities emitted by corporations or



trustees, from any direct accountability, whatsoever, for its prudent and efficient management. The second change is the wide and ever-accelerating diffusion of a considerable portion of this ownership, represented by stock holdings of employees and of the direct consumers, both of public utility corporations and of private business companies as well. The net result of both changes is the assumption of an absolute control by intermediaries—most commonly bankers, so-called—in place of the former responsibility for direction which, theoretically at least, rested upon the shoulders of the actual owners.

Both these tendencies menace alike the welfare of the private owners themselves and of the working classes; and they put the public interest in the sound and straightforward management of these businesses in jeopardy—not because bankers, as such, are more frail than other people in general, but simply because the possession of uncontrolled power is always certain to entail abuse, whereby both innocent and guilty are alike dragged down. The result, therefore, unless present tendencies are taken in hand, will necessarily be the extension of the activity of such bodies as the Federal Trade Commission, acting for the protection of those who have unwittingly made themselves wards of the state in respect of their possessions.

The practical disappearance of the individual and partnership forms of business organization in favor of the corporation took place before the War. Almost a thousand companies are now listed on the New York Stock Exchange alone—163 railroads and 763 other corporations. The present transformation is merely in respect of the seat of power over their direction. All kinds of private businesses are being bought up by banking houses; and new corporations are being substituted for the old, in order that the purchase price (and more) may be recovered by sale of shares to the general public. But the significant change is that the new stock, thus sold, is entirely bereft of any voting power, except in case of actual or impending bankruptcy. General stockholders, to be sure have always been inert, delegating most of their powers of election. But, at worst, they might always be stimulated to assert themselves; and, in any event, they all fared alike as respects profits or losses. Under the new style of corporation, such general stockholders are



badly deprived of all rights in this direction, and new preferred stocks are sold up to the hilt of the value of the assets, if not beyond. The issues are called preferred stocks. They are really bonds. And, instead, as formerly, of being limited to a half or two-thirds of the tangible assets, no limit is now set, except the powers of absorption of the investing public.

Every kind of business is being swept into this maelstrom. Several public utilities, except railroads; chain and department stores, food stuffs, washing machines, refrigerators, confectionery, make-believe silk stockings, toilet and beauty preparations, our daily bread, our cake and our ice cream—even our home-made pies! Every conceivable article, of direct or indirect consumption, is covered by the change. The recent Dodge Brothers, Inc. is typical. A banking house buys up a private business for, let us say, \$146,000,000. This sum and more, it recovers by the sale to the public for \$160,000,000 of bonds, preferred stock and 1,500,000 non-voting shares of "Class A" common stock. But not a single one of the 500,000 "Class B" voting common shares is thus sold. The promoters have virtually paid themselves a handsome profit for the assumption of the entire directorial power, having mortgaged the property to the full amount of its original cost, including both assets and capitalized earning power.

Perhaps the baldest case of this sort is that of an artificial silk concern, which thus sold (let us hope?) 598,000 shares of non-voting "Class A" stock, reserving 2,000 of the total 600,000 shares as "Class B" stock carrying *exclusive* voting rights. There is no concealment about it. But who, may we ask, has given a hostage to fortune, for honest and economic management of the business? The promoters stand to lose only the amount of their stake—a minus quantity in dollars, leaving aside, of course, the moral obligation. It is the public stockholders who stand to lose their all, in case of misdirection. And most of them have parted with any hope of participation in future profits over and above their fixed return, by agreement in the subscription to forfeit all "preëmptive" rights in the issue of new stock. How can there be other than a whirlwind of abuse of power under such conditions?

As for the second financial fashion—the wide distribution



of stock to employees and to consumers of the corporation's product, whether electric service, steel or what not—the effect is bound to be cumulative with that of insinuation of banking power between ownership and operation. Corporations have always been susceptible to control by concentration of voting power. Far less than half of the capital stock may be as effective for such control as possession of an actual majority. But it is elemental, requiring no proof, that the larger the number of shareholders, the more easily may a small concentrated block of minority holders exercise sway over all the rest. With a dozen owners, probably fifty-one per cent will be necessary for dominance. With 300,000 scattered holdings, a possible fifteen or twenty per cent of the votes can never be overmatched at an election. In 1923, there were 250,000 new stockholders registered in the electric light and power companies alone. The total number of stockholders in all sorts of concerns has almost doubled since 1900, rising to an aggregate of 14,423,000 in 1923. These shareholders now possess over \$70,000,000,000 worth of stock at par, on the showing of the Federal income tax returns. Such possession used to be confined to the wealthy and the well-to-do class. Now it comprehends the small householder and large numbers of wage-earners. The former concentration of wealth is now yielding place to so wide a diffusion, as to call for public recognition by way of legislation or oversight. But the important point to note, is that the wider the diffusion of ownership, the more readily does effective control run to the intermediaries, in this case promoters, bankers, or management companies. Until corrected by appropriate revision of our corporation law or practice, this apparently healthful manifestation may contain the seeds of grave abuse.

The foregoing dangerous tendencies are much aggravated, also, by reason of the operation of a number of highly artificial legal devices which serve to isolate still further the property owner from control over his investment. The holding company, voting trusts, trusts set up for the living, the moribund or the dead, the investment trust, and finally the intervention of the life insurance companies as investing agents for their policy holders—each and every one of these has latterly insinuated itself to still further set off ownership from responsibility in



management. It is all cumulative—and, in the aggregate, fraught with the gravest possibilities.

Many remedies for undue concentration of power of direction of corporations have been suggested. There is one which stands forth preëminently. Publicity of accounts and their standardization are likely to be most serviceable as a check upon otherwise unrestrained control. These millions of investors and the public, even if they have so confidently given their possessions over into the care of others, have a right to full and complete, unmitigated information. There lies an appropriate function for a rejuvenated and enlarged Federal Commission, to discharge an obligation of the Federal Government to a great and in many respects a helpless body of our citizens. This may come about soon. It may be long delayed. But it will occur some day, as one of several necessary correctives for these existing practices.



# JOHN DAVISON ROCKEFELLER, JR.

## THE PERSONAL RELATION IN INDUSTRY

John D. Rockefeller, Jr., was born in Cleveland, Ohio, in 1874. Since his graduation from Brown University in 1897 he has been associated with his father in business enterprises and has been active in philanthropic work. He is Chairman of the Board of the Rockefeller Foundation and director in various humanitarian enterprises. In recent years Mr. Rockefeller has given special attention to social and personal relations in modern industry, as well as to large schemes for religious and social betterment.

I AM glad to have this opportunity of speaking to you men, numbers of whom will be the future leaders in industry. Heretofore the chief executives of important industrial corporations have been selected largely because of their capacity as organizers or financiers. The time is rapidly coming however when the important qualification for such positions will be a man's ability to deal successfully and amicably with labor. Yet how to do this is a subject which, I fancy, is never taught or referred to in the classroom.

Like knowledge of the problems of sex, than which no department of life is more sacred, vital or deserving of full and ennobling instruction, an understanding of this subject is left to be acquired by experience, often costly or bitter, or through chance information, gleaned too frequently from ignorant and unreliable sources. Just as the first of these two themes is coming to be taught sympathetically and helpfully in our schools and colleges, so I believe the second, the personal relation in industry, will eventually be regarded as an important part of those college courses which aim to fit men for business life.



After all, is it not the personal relations with one's fellows which, when rightly entered into, bring joy and inspiration into our lives and lead to success, and which, on the other hand, if disregarded or wrongly interpreted, bring equally sorrow and discouragement and lead to failure?

Think what the ideal personal relation between father and son may mean to both. Some of us have known such contact. Our lives have been fuller and richer as the result, freer from sin and sorrow. Others of us know from bitter experience what the absence of this relationship has involved. How helpful to a student is such a friendly association with some professor who commands his confidence, respect and regard, and who is interested in his college work, not for itself alone, but quite as much because of its bearing on his future life's usefulness. What would college life be without the personal relationships which are formed during its happy days and often continued close and intimate through life?

Can you imagine a successful football team composed of strangers, having no points of contact, no sympathy with each other, no common cause inspiring them to strive for victory? Team play, the support of one player by another, would be well nigh impossible. Even in the army, where formerly the man who had become the most perfect machine was regarded as the best soldier, it is coming to be accepted that in addition to being obedient and subject to discipline, the man who thinks, who is capable of acting on his judgment when occasion arises, who is bound to his fellow soldiers and his officers by personal friendliness, admiration and respect, is a far more efficient soldier. And whereas formerly, particularly in the armies of Europe, privates were not allowed to have any personal association or contact with their officers, we hear that in the present war a spirit of comradeship is developed by the officers with their men off duty, which personal relationship is building up rather than weakening the morale of the armies. What is true as to the relationships which I have mentioned is equally true in industrial relations, and personal contact is as vital and as necessary there as in any other department of life.

Let us trace briefly the history of the development of industry, that we may see where this personal relationship is present,



where absent, and what is the effect of its presence or absence. Industry in its earliest forms was as simple as it is complex to-day. The man who provided the capital was frequently the director, president, general manager and superintendent of the enterprise, and in some instances actually worked with his employees. These latter were few in number. They were usually born and brought up in the same community with their employer, his companions in school days, his friends and neighbors, often calling him as he did them by the first name.

There was daily contact between employer and employee, and naturally if any questions or causes for complaint arose on either side, they were taken up at the next chance meeting and adjusted. Next came the partnership, a development necessary because more capital was required than a single individual cared to or was able to provide. Two or more partners were thus associated together, but otherwise the situation was not materially different from that just described, except that more employees were required.

With the invention of the steam engine and its application to railroads, which quickly began to make their way over the face of the earth; with the development of the steamboat, replacing to so large an extent the old sailing vessels and making possible the regular and frequent transportation of the products of the soil and of industry from one part of the world to another; with the perfecting of the telegraph, cable and telephone, there came the need for larger aggregations of capital in order to carry on the ever-expanding industries that were required to keep pace with this growth. This led to the development of the corporation, the capital for which was supplied in larger or smaller amounts by few or many individuals, thus making possible almost indefinite financial expansion. And this form of business has continued to grow, as commerce and industry have become not only national but international and world wide in their extent, until we have to-day the United States Steel Corporation, with its 120,000 stockholders and its 260,000 employees.

It stands to reason that corporations of such magnitude have necessarily become highly specialized. The responsibility of an individual stockholder in a corporation is of course in pro-



portion to his interest, but the function of the stockholders in general consists in casting votes each year for the election of directors to represent their interests. The directors in turn are charged with the general responsibility of developing the policies of the corporation, some of which are matured by the officers, of selecting its officers and of seeing to it that the corporation is properly managed. The officers as the executives of the company carry out the company's policies and are charged with the actual operation of the company and the employment of labor.

As we contrast this gigantic organization with the simple form of industrial organization first described, it is at once apparent that in the very nature of the case the man who supplies the money seldom if ever comes in contact with the man who supplies the labor. Here we note a marked and serious change. While deplorable, this situation is practically inevitable. Frequently the industry in which a stockholder has invested his capital is located in a far distant city. Not only this, but often investments are made in corporations which conduct business in other countries almost at the ends of the earth. As a result of this lack of contact between labor and capital, the personal relationship has disappeared, and gradually a great gulf has grown up between the two, which is ever widening.

It is regrettably true that there are capitalists who regard labor as their legitimate prey, from whom they are justified in getting all they can for as little as may be. It is also true that on the part of labor there has been a growing feeling that it was justified in wresting everything possible from capital. So these two great forces have come too often to think that their interests are antagonistic, and have worked against each other, each alone seeking to promote its own selfish ends. This has resulted in the strike, the lockout and the various incidents of industrial warfare so regrettably common in this day and apparently on the increase.

Reports of the United States Bureau of Labor Statistics show that for the first eleven months of 1916 there were 3,134 strikes and lockouts in the industries of this country, as against only 1,147 for the corresponding period of 1915. These industrial conflicts have in some instances come to be little short



of civil war; vast sums of money have been lost by both sides, untold hardship and misery have followed in their wake.

I have not had access to data showing the cost to this country of strikes and lockouts. However, the following quotation from a recent address made by Mr. Frank A. Vanderlip, President of the National City Bank of New York, throws light on the subject. Mr. Vanderlip said:

The cost of the recent garment-workers' strike in New York City has been estimated to be in the neighborhood of fifty million dollars.

The last anthracite coal strike in the short course of five months caused a loss of one hundred and twenty million dollars to employers and employees in the community.

I have seen the statement that in a single year the losses that can be attributed to labor disturbances in this country total more than a billion dollars.

These are extraordinary figures, and though some of them are doubtless merely estimates, they serve to show what enormous proportions the industrial problem has assumed and how serious and vital a question it has become.

May I not add that almost beyond belief as these figures are, they do not include those terrible mental and moral losses growing out of struggle and conflict, nor do they take account of the depleted bank balances of the workers, and the hunger, suffering and distress which extend into the homes and which touch the lives not only of those immediately concerned, but of tens of thousands of innocent women and children.

What I have said leads me to advance two ideas, both of which I believe to be profoundly true, but which have received far too limited consideration.

The first is that labor and capital are naturally partners, not enemies.

The second, that the personal relation in industry, entered into in the right spirit, gives the greatest promise of bridging the yawning chasm which has opened up between employer and employee.

The mistaken point of view in regard to the relation between labor and capital exists on the part of both labor and capital as well as among the interested and disinterested public. Too



often capital regards labor merely as a commodity to be bought and sold, while labor not infrequently regards capital as money personified in the soulless corporation. It might seem that technically speaking both of these definitions could be justified, but they are far from being comprehensive and adequate. For both labor and capital are men—men with muscle and men with money. Both are human beings and the industrial problem is a great human problem.

This is one of the first things we need to recognize, and it is just because human nature is involved in this problem that it is so intricate and difficult to solve.

The popular impression that from the very nature of the case labor and capital are two great contending forces arrayed against each other, each striving to gain the upper hand through force, each feeling that it must arm itself in order to secure from the other its rights and its just dues, is even more unfortunate than it is untrue. I cannot believe that labor and capital are necessarily enemies. I cannot believe that the success of one must depend upon the failure or lack of success of the other. Far from being enemies, these two factors must necessarily be partners. Surely, their interests are common interests, the permanent well-being of neither can be secured unless the other also is considered, nor can either attain the fullest possibilities of development which lie before both unless they go hand in hand. Only when the industrial problem is approached from the point of view of a firm belief in this doctrine is there any hope of bringing about closer, more healthful and mutually advantageous relations between these two forces.

If, therefore, my first statement is true, namely that labor and capital are partners, then certain things must follow. They must have contact. This standing aloof one from the other must end. Partners know each other, they rub elbows, sit around the same table, come to understand each other's point of view. Respect grows in the heart of each for the other, confidence is developed, and they come to realize that they are working with a common interest for a common result. But this attitude, this relationship, is the personal relation in industry. Nothing else will take its place, nothing else will bridge the chasm of distrust and hatred.



It is the recognition of the brotherhood of man, of the principle of trying to put yourself in the other man's place, of endeavoring to see things from his point of view. The old saying that honesty is the best policy is often scoffed at and pronounced unpractical, but there never was a truer saying. *Honesty is the best policy.* You may be able to deceive a man once or twice, or if he is exceptionally gullible, half a dozen times, but you cannot deceive him indefinitely. You may be able to deceive a number of people sometimes, but you cannot deceive all of the people with whom you have business dealings all of the time. You may be able to make a contract which gives you an unfair advantage of the other man, but the chances are that you cannot do it twice.

From a purely cold-blooded business point of view, honesty *is* the best policy. Likewise do I say that to treat the other man as you would have him treat you is an equally fundamental business principle. This does not mean that you should surrender your rights or neglect to avail of your opportunities. It simply means that in the game of business, the same rules of sportsmanship should prevail as in a boxing bout, in a match of golf, or a football game. Play fair and observe the rules. Let the contest be clean, gentlemanly, sportsmanlike, a contest always having regard for the rights of the other man.

Assuming, then, that the personal relation is a vital factor in successful industrial life, but recognizing the impossibility in this day of big business of reproducing it as it existed between employer and employee in the early days of industrial development, how can a like result be brought about, how can personal contact be established?

Granting that it is impossible for the stockholders of a great corporation to come into frequent or even semi-occasional contact with their partners, the employees of a company, and that the situation is much the same with the directors, at least it is possible, and must be made increasingly so, for the leading representatives of the stockholders and directors, namely the officers of a corporation, to have such contact with the employees, special officers being appointed for that purpose alone if necessary. Because of the vast number of employees in many a company, even this is difficult and altogether too infre-



quent to-day. As the officers of our great corporations come to see more and more that the problems of understanding their employees and being understood by them is a vital problem, one of the most important with which the management is confronted, they will be convinced not only of the wisdom of devoting far more time to such contact, but of the desirability and the advantage to themselves, and to the employees as well as to the company, of such closer relation and intimate conference in regard to matters of common interest and concern.

If we look into our own experience, we find that the misunderstandings which we have had with other men have been largely the result of lack of contact. We have not seen eye to eye. Men cannot sit around a table together for a few hours or several days perhaps and talk about matters of common interest, with points of view however diverse, with whatever of misunderstanding and distrust, without coming to see that after all there is much of good in the worst of us and not so much of bad in most of us as the rest of us have sometimes assumed.

But some one says, "We grant the desirability of the personal relation in industry. Theoretically we accept your suggestion as to how this theory can be put into practice in the industrial life of to-day, but practically, will it work?"

I can best answer this question by saying that such a program has been put into operation in a certain coal company in Colorado, in which my father and I are interested and of which I am a director. If you will pardon a personal reference, may I say that when I visited Colorado some eighteen months ago, I had the opportunity of talking personally with hundreds, if not thousands, of the employees of that company. These men and many of the people of Colorado had formed their opinion of any one bearing the name of Rockefeller from what they had read and heard. Because of certain industrial disturbances which had developed in the state, bitterness and hatred had existed to a high degree.

As I went from camp to camp I talked with the representatives of the men individually and privately, I went into the men's homes, talked with their wives and children, visited their schools, their places of amusement, their bathhouses, and had just such friendly relations with them as any man going among



them would have had. Frequently I found points of difference between the men and the officers, but in no single instance were the men as I met them other than friendly, frank and perfectly willing to discuss with me, as I was glad to discuss with them, any matters they chose to bring up.

It often occurred that there was justice in the points which they raised and their requests were acted upon favorably by the officers. Also frequently situations were presented in which it was impossible for the company to meet the views of the employees. But never was a subject dismissed until, if unable myself to make the situation clear, the highest officials of the company were called to explain to the employee with the utmost fullness and detail the reasons why the thing suggested was impossible. No matter presented was left without having been settled in accordance with the request of the employee, or, in the event of that being impossible, without his having been fully convinced that the point of the company was just and right and in the common interest.

This personal contact with the employees of the company led to the establishment of mutual confidence and trust and to the acceptance on their part of the premise that they and we were partners. The men generally came to see that the man about whom they had heard was very different from the man whom they had met in their homes and at their work. While they distrusted the former, they believed in the latter. Before I left Colorado, a plan of industrial representation, providing for close personal contact between the duly elected representatives of the men and the officers of the company, was worked out and adopted by a large majority vote of the employees.

I will not take your time to describe this plan, but in substance it aims to provide a means whereby the employees of the company should appoint from their own number as their representatives men who are working side by side with them, to meet as often as may be with the officers of the corporation, sometimes in general assembly, where open discussions are participated in and any matters of mutual interest suggested and discussed; more frequently in committees composed of an equal number of employees and officers, which committees deal with



every phase of the men's lives—their working and living conditions, their homes, their recreation, their religion and the education and well-being of their children. In brief, the plan embodies an effort to reproduce in so far as is possible the earlier contact between owner and employee.

I do not venture to make any prediction as to the ultimate success of the plan. Two interesting side lights, however, may be mentioned. The first is that whereas the plan itself and an agreement covering working and living conditions was adopted by the coal miners employed by this company some fifteen months ago, since that time the same plan and agreement, adapted to the particular requirements of the steel workers, and also of the iron miners employed by the company, has been adopted by both.

The second, while the company has reopened a number of mines formerly idle and is now working quite to the limit of its capacity in the production of coal, it has all the labor at its various mines which it requires, and that too without having made any special effort to attract labor to its recently reopened mining camps. At the same time, other coal companies in the state of Colorado, as well as generally those throughout the United States, are understood to be having difficulty in securing an adequate supply of labor.

But there is a further reason why the personal relation in industry is of such vital importance, and that is in order that the attitude and purpose of the owners and directors of a company may be rightly understood by and interpreted to their partners, the employees, and vice versa; also that all grievances may be taken up and adjusted as they arise.

How true it is that when some petty representative of a great corporation makes a sharp trade with a customer, the customer at once says, "Obviously, the president of this corporation is a dishonest and unscrupulous man. It must be that he has directed his agents to pursue these sharp and crooked practices." However high minded the owners or directors of a company may be, it is of the utmost difficulty to guard against such practices on the part of an occasional representative. But it is obviously just as unfair on such grounds to maintain that the owners and managers are unjust and crooked in their business methods as



it would be to say that the whole tree was bad, simply because one apple on it had spots or imperfections.

The employee in any corporation must form his opinion of the owners and directors of the corporation from the petty officers or foreman with whom he has personal contact. Too often these men, not infrequently promoted from the ranks, become overbearing and arrogant in their treatment of those under them. This very naturally is as irritating and unjust to the employee as it is distressing to the company, and it is at this point in ninety-nine cases out of a hundred where grievances arise.

The Colorado Industrial Plan to which I have referred has been so drawn as to guard against the exercise of arrogance or oppression, by providing various channels through which the employee with a grievance can at once secure a sympathetic and friendly hearing, carrying his difficulty to the president's ear, if necessary. The foreman who knows that any arbitrary or unjust action on his part may be reviewed by his superior officers is very much more careful in his treatment of his men, always wanting to avoid having his decisions reversed.

If a slight scratch made on the finger with a rusty nail is immediately cleansed with an antiseptic wash, it heals at once. On the other hand, if the poison which has been introduced is allowed to remain, soon inflammation sets in, the disorder spreads, and serious menace to life may result. And so it is with the petty grievance. If it is dealt with sympathetically and justly, immediately it is made known, peace, harmony and good will are readily maintained. On the other hand, if indifference is shown and lack of sympathy, the grievance is nursed and from it grows the industrial disorders which later become so acute and difficult to heal. An ounce of prevention is worth much more than a pound of cure. In no place is this saying truer than in dealing with human nature.

If I were to sum up in a few words what I have been endeavoring to say to you in regard to the personal relation in industry, I should say, apply the Golden Rule.

Every human being responds more quickly to love and sympathy than to the exercise of authority and the display of distrust. If in the days to come, as you have to do with labor, you



will put yourself in the other man's place and govern your actions by what you would wish done to you, were you the employee instead of the employer, the problem of the establishment of the personal relation in industry will be largely solved, strife and discord as between labor and capital will give place to coöperation and harmony, the interests of both will be greatly furthered, the public will be better served, and through the establishment of industrial peace, a great stride will have been taken toward the establishment of peace among nations.









ELIHU ROOT



# ELIHU ROOT

## ROCKING-CHAIRS AND RESPECT FOR LAW

Address by Mr. Root at the banquet of the American Society of International Law.

I was told the other day by a friend of a visit he made to a great public institution in which there was provision for the insane. He was taken to a room in which there were twenty-odd women in rocking-chairs, all rocking as hard and as fast as they could—rock, rock, rock—saying nothing, doing nothing but rocking. He said: "What does this mean?"

"Well," the director said to him, "these women are all violent lunatics and this rocking enables them to work off steam and it satisfies their strong impulse to do something violent. If they were not able to do this they would be doing the most outrageous things."

Now, in the disturbed condition of international affairs, with the one hundred persons in this room, each one of whom knows perfectly well what ought to be done and what can be done for the reconstruction and regeneration of the world, a very useful thing it is to get together here and rock for a while, to restrain our dispositions towards great and violent deeds by genial fellowship, by that magnetic influence which comes from association with others and the realization that other people have ideas too, and that perhaps we do not all have the same ideas, and that it is useful to compare, and that, one of the most beneficial things for the world may be to set the example of consideration for other people's ideas.

Some years ago in Russia I was taken to see a very great an-



archist, Prince Kropotkin, a close friend of Tolstoi's, and after Tolstoi's death the leader of all the guilds and sects of anarchists of Russia. I had a delightful afternoon with him. He was one of the most genial and philosophical fellows I ever knew.

When we were coming away the gentleman who had made the arrangements and who had taken me there, a man who bore a great name in Russia, said to me, "You are going to have a revolution in America."

I said, "Is that so? Why? People there make their own laws and they select the people to execute them. I don't see why they should revolt."

"Oh," he said, "you are going to have a revolution. You cannot have real freedom in America until you have destroyed two things."

I said, "That is very interesting. Pray, tell me what they are."

He said, "One is capital and the other is public opinion."

I have thought a great deal about that. He was a man of intelligence. He was not one of the class of men anxious to pull everything to pieces with a view of picking up the pieces for for himself. He was a man of position and standing.

It seemed to me that what was really in the back of his head was that the public opinion of the community constrained by its force individual conduct and that that constraint was tyranny; that to be truly free every member of civil society should be at liberty to do just what he chose to do without any reference to the unwritten laws of society.

I am inclined to think that, without its being stated so boldly, the world at large is pursuing that idea. One of the results of the war is an intolerance of the restraint of those rules which have grown up through the centuries for the conduct of civil society in the state, in the conduct of nations, and in the conduct of individuals. I am inclined to think that under the disruptive force of war the cement which binds the members of civil society together has been running out, that cement which consists of tradition, respect for that past upon which we found our efforts for a more glorious future, respect for the laws which embody and express the common judgment of the millions of sane and honest people who have lived through the generations



and centuries, the laws which were the growth from their lives and their sense of need for order. All over the world, I believe it to be true that the great need of civilization now is a renaissance of respect for law. And when that comes you will find a decrease in the hold-ups and the exploits of Dick Turpin on our highways, and the multitude of crimes which we call a crime wave.

To one field of human thought and human struggle for effective organization this Society is devoted, and effective influence or action in that direction cannot come from individual effort alone. It must be by associated effort, and associated effort requires a consideration of others, respect for the opinions of others, a conception of liberty which is not liberty for one's self alone but a willingness to accord the same liberty to others, a conception of justice which means not getting an allowance of one's own claims but a willingness to do justice to others, and the attrition of intercourse and good fellowship and kindly feeling and personal recognition, all of which are being promoted by a thousand gatherings of various kinds all over the country. All are playing their part towards the accomplishment of the great end of the restoration of law in the world, which when it comes, will be indeed the real, not the ephemeral or phantasmal end of war.

Priscilla said to John Alden, "Why don't you speak for yourself, John?" and I feel bound to apply the rule in regard to these dinners I announced a little while ago and say, "Why don't I stop speaking myself?" and, accordingly, I have the very great pleasure and honor of introducing to you as the first speaker the one whom I should select, if I were called upon to designate the man who of all the men in America, not merely by reading but by personal association, intelligent observation, and human contact was the best informed regarding the public life of Europe, Mr. Nicholas Murray Butler.



# CHARLES M. SCHWAB

## HOW TO SUCCEED

Charles M. Schwab is a striking example of success. The story of his life makes a most interesting chapter in the great book of romance in American business. He was born at Williamsburg, Pa., in 1862 and as a boy drove a stage from Loretto to Cresson in Pennsylvania. While still a mere boy he entered the service of the Carnegie Co. as a stake-driver in the engineering corps of the Edgar Thompson Steel Works. His promotion was rapid. He became Superintendent of the Homestead Steel Works when he was 25; General Superintendent of the Edgar Thompson Steel Works when he was 27; President of the Carnegie Steel Co., Ltd., when he was 35 and President of the U. S. Steel Corporation at 39. As Director General of the ship building of the U. S. Shipping Board Emergency Fleet Corp. his great energy and enthusiasm were of incalculable benefit. This address was given at Princeton University. It is of especial interest as a direct and informal talk from a leading capitalist to an audience of boys just facing the responsibilities of life.

TO-NIGHT I have not made a single bit of preparation except the preparation that may come to one on the spur of the moment who imagines himself to be young again, who imagines himself to be one of you, who looks back with the pleasure that I would feel if I were one of you and talks to you as an older boy who has been through a great many years of experience in a more or less personal manner. If I do talk in this way, I hope you will pardon me if I talk about myself or my industries or things of that sort. I do so only with a view of





CHARLES M. SCHWAB







your better understanding and appreciating the points that I want to make to you.

For the first time, this evening, down at the clubhouse, I saw the subject that I was to lecture upon. Well, I don't suppose it makes much difference what was on the bulletin boards, but it's rather what I may have to say to you that will interest you. Here you young men, next year or within a few years at least, will be ready to start upon an active life of usefulness in this country, and you want to hear from one who has been through the turmoil and strife of industry for many years about what are the qualifications, what are the things that attract attention, and what are the things that will lead to your greater and better success in life.

And, before I start that, I want to tell you what I think of what success in life means. I told these good-looking young gentlemen in evening suits down at the dinner table this evening—and I never had a more delightful dinner—I don't mind saying that I never talked quite so much and never to a more interesting crowd, but what I did say to them, and now tell you, is defining what I mean by a successful life, and it will bear repetition.

I know that it is very difficult to convince the great majority of people that men who are in active pursuit of life have any other object in view than the making of money. Well, now, boys, that is a great mistake. The real leaders of industry and the real men in life, and the real successes in life, are not always the men who have made lots of money or a great fortune.

My idea of the successful life is the man who has successfully accomplished the objects for which he set out, to do something that is worthy of a real American man. Money is often a matter of chance or good fortune, and is not the mark of a successful life. And while I have some money—not much since I paid my taxes, boys—it is not the thing that brings a throb of pleasure or a thrill into my life. And I would not pose as a successful man if that was to be the measure. But when I look about me and see the multitude of friends that I have after forty years of business association with men, when I see the great lines of smoking stacks and blazing furnaces that have come into being because of my interests and activity in



life, and when I see a work that I set out to do successfully accomplished and meeting the approval of my fellow men, then a real thrill comes into my heart and I feel that I have done something worth while. The money one doesn't think about as long as you have enough to pay your bills and keep your business going.

I said in a speech in Pittsburgh a short time ago, with reference to my dearest friend that I ever had in life, Andrew Carnegie, that he used to say to me when I went to him with my balance sheet and showed him how many hundred thousand dollars we had made that month or year, "That's interesting, but show me your cost sheet." That is the mark of successful manufacturing, how economically and how well you do a thing, not how much money you make in the doing of it. So, boys, his mark—and he was a wise man—his mark of a successful industry is my mark of a successful life. Set out with some definite purpose in life and accomplish that purpose.

I was not able to place the quotation myself, but your honored President here, a doctor of philosophy, told me this evening the name of the philosopher who said it, and that was that there is little that the human mind can conceive that is not possible of accomplishment. Now, the thing you want to do is to make up your mind what you are going to drive for, and let nothing stand in the way of its ultimate accomplishment. Why, boys, one of the greatest pleasures in life to me is to have the recognition from such a body of young men as you are here to-night, to have you say, "We would like to hear something from the man that we think has been successful in some things in life." I had rather have it than millions. It brings more pleasure and more satisfaction.

Now, in my long experience in business life and association with men, there are some fundamental things that must not be overlooked.

If I were asked to say the most important things that lead to a successful life I should say that, first of all, was integrity—unimpeachable integrity. No man can ever do anything of any great value in life and have the confidence and approval of his fellow men or be successful in his undertakings with other



business men if he doesn't have the reputation of being a man of honor and integrity.

And I don't mean by that that a man shall be so high in the moral and social state of life that he is incapable of any action that might not be regarded as always right, but I have the highest regard for a man who, when he has done something wrong, manfully admits it and constantly sticks to the truth of integrity, however much it may seem to hurt.

I am going to speak of a young man that I regard as the most successful young man I have ever known. And if I did not regard him as the most successful young man that I know, he would not be the President of the Bethlehem Steel Company. I am going to speak of a young man that I have known since he was a man your age—I refer to Eugene Grace. You may have heard of him—and you baseball fans undoubtedly did—because he came down and played baseball at Princeton many years. He came from Lehigh University. When I first knew him he was a shoveler of coal with an electric crane. I followed his career on and on and on. And whatever may have been said of Mr. Grace you could always depend upon it absolutely that when Mr. Grace said a thing you would know the absolute facts, good, bad, or indifferent. And, to-day, Mr. Grace stands among the great business men of New York and this country, with the reputation of being a man with absolute integrity and a man upon whom everybody can place the greatest possible confidence.

That is the very foundation of a successful life. With this to start upon, then the other is going to be easy going and easy following.

You can make up your mind to do one of two things: You can have a good time in life or you can have a successful life, but you can't have both. You have got to make up your mind at the start which of the two you are going to have.

There is no royal road to a successful life, as there is no royal road to learning. It has got to be hard knocks, morning, noon, and night, and fixity of purpose.

Never has there been a time in the history of the world when so much opportunity offers for the leading of a successful life as to-day. What would I not give to be one of your age again,



and have the opportunity of starting life afresh! You think the opportunities of the past will not be the opportunities of the future. In that, boys, you make a mistake.

When I first started in the steel business the whole United States produced only 1,000,000 tons of steel in a year. That was about 1880. In 1890 we had got to 8,000,000; in 1900, to 12,000,000, and in 1920, we have got to 45,000,000 tons of steel annually. Now, we thought twenty years ago that the steel business had reached its zenith. We are just as far from the zenith to-day during your normal lifetime as we were from the zenith twenty years ago.

I don't say you shall become manufacturers or business men or professional men—I don't know what you are going to be. But this I do know: That any man who goes into anything in life and does it better than the average will have a successful life. If he does it worse than the average his life will not be successful. And no business can exist in which success cannot be won on that basis. If it did exist, and nobody could make a proper success or get a proper return from it in life, the business would tend to go out until it would reach a basis on which it could be profitable.

Another important thing is loyalty.

Now, that is what you boys in universities and colleges learn. You learn loyalty to your Alma Mater. You learn loyalty to your fellow students. You learn loyalty to the friendships that are going to follow you through life. The one thing that you are distinctively in the university is that you are loyal men. Be loyal. What little success I may have won in life I attribute to the loyalty I had for a dear old friend who was my first steel master, whom you perhaps have never heard of, Captain Bill Jones.

Captain Jones was a great mechanic, just a natural genius at mechanical things. No education at all. He knew nothing of engineering or chemistry or the sciences. Now, I was thrown in, fortunately, with him. I made up my mind that I could be very useful to that man by learning things that he could not learn, and, above all, by being loyal to him and never letting the world know that the things for which he received credit were not his own creation. Boys, did you ever stop to



think that a great man in life who has won great acclaim and great reputation is the very man who is willing to share and give the honor to others in the doing of things that made him great? The man that will selfishly stand along and proclaim that he is the man who has done these things never is the man who really did them. My own experience is that there is no real effort in life that is not done better under encouragement and approval of your fellow men. A man goes along then with greater confidence. You must learn to let others share with you in that which you are doing, and honor and credit will be reflected upon you for so doing.

Marshal Foch, the great commander, said to me a short time ago, when I congratulated him upon the wonderful work of the War: "This great military staff is like an orchestra, and each one fills his place. Each is equally important in the functioning of the whole. If the baton is in my hands it is merely a matter of chance, but we shall see to it that each man in this staff gets recognition for that which is due." You never heard a great man say, "I did this," or "I will do that."

In the management of my great enterprises I have yet ever to find fault with any man. If a man is of the character that you must find fault with him to get the best out of him he is not a man to be desired in an organization. Show me the man that will do his best under approval, and I will show you the man that has within him the elements for successful going ahead.

**Now, to come back to loyalty.**

Be loyal to the people with whom you associate at the start.

When this good Captain Jones came to the end of his life's work, do you not suppose it was worth more to me than anything else to have him say: "That is the man that helped me do these things"?

Remember always that it will but attract attention and credit to yourself to share it with those who help you. Be loyal when you start life, boys, wherever you start. Make your employer feel truthfully that you are sincere with him; that you are going to promote his interest; that you are going to stand for the things which he represents; that you are proud of being a mem-



ber of his staff, and there is nothing that will reap you a richer reward.

Loyalty above all!

Boys, there are other things in life than mere work. I believe an appreciation of the finer things in life, the learning to know the beauties of literature and art and music, will help any man in his career. A man to carry on a successful business must have imagination. He must see things as in a vision, a dream of the whole thing. You can cultivate this faculty only by an appreciation of the finer things in life. No active business life, whether it is manufacturing or something else, can prevent you from enjoying the beauties of life. These finer things will contribute to your success.

Be friends with everybody. When you have friends you will know there is somebody who will stand by you. You know the old saying that if you have a single enemy you will find him everywhere. It doesn't pay to make enemies. Lead the life that will make you kindly and friendly to every one about you, and you will be surprised at what a happy life you will live.

I said, coming down in the carriage, "What would I not give to be your age again!" I have not a single regret in life. The hardships that have come to me in life have but made me the keener enjoyer of the good things in life. I tell a story of a German workman I had years ago, and a saying of his that I adopted as a motto in life. We were having labor difficulties at the mill. He was a loyal fellow. The workmen picked him up and threw him into the river one day because he had reported for work. He came into my office all covered with mud and water to tell me what had happened. I asked him what he said. He said, "I yust laughed." That's the thing to do—"Yust laugh."

I am going to tell you a little more—I am not lecturing to-night, but just talking as if you were in my drawing-room. I would just like to say to you what I feel, just as if you were my own sons.

I want to tell you a little more about this man Grace, because one often sees the point in a successful life best by analyzing a single individual. I told you of his great faculty of making



good, no matter in what position he was placed. This boy went on and on. Above all, he worked hard with that brain of his which had been trained in the university to think and concentrate upon the subject that he was thinking about until he had reached a satisfactory conclusion. Now, that is the great point, to concentrate and think upon the problem in mind until you have reached a satisfactory conclusion in your own mind, and then finally go ahead. If you have made a mistake, all right. Never find fault with a man because he has made a mistake. It is only a fool that makes the same mistake the second time.

Now, in my own establishment you will be interested to know something about how we do things. You boys will all, of course, have to start to work upon a salary. But the quicker you get out of working for a salary the better for all concerned. In our works at Bethlehem and San Francisco, and all over the United States, I adopted this system: I pay the managers of our works practically no salary. I make them partners in the business, only I don't let them share in the efforts of any other men. For example, if a man is manager of a blast furnace department he makes profit out of the successful conduct of his department, but I don't allow him to share in the prosperity of some other able man in some other department of the establishment. I give him a percentage of what he saves or makes in the department immediately under his own control and management. For example, if it takes a dollar a ton to make pig iron, and it takes him a dollar a ton to make pig iron, I say to him:

"Well, you are no better than the average manager over the country. Therefore you are entitled to only the usual wages. But if you can make pig iron at 90 cents a ton you are entitled to share with me in a large part of the profits. And if you make it for 40 or 50 cents a ton you share to a very large degree."

Therefore, I don't care how much a man earns. The more he earns the better I like him. And I pay in what I call bonuses to the various superintendents and managers of the different establishments more money for their successful management than I pay the stockholders of the concern in dividends. And it will surprise you to know the great sums of money that some of these men make. I would be afraid to tell



you for fear of discouraging you in your start in life. But I don't mind saying that forty, fifty, sixty, a hundred thousand dollars a year for these men is not infrequent. And in the case of men like Mr. Grace, well, many, many times that.

It is a matter of common knowledge and it is a matter that has been published. And I am glad to tell you that in the carrying out of this principle, Mr. Grace has earned considerably more than \$1,000,000 a year. Mr. Lee knows Mr. Grace, and he knows that that statement is correct. It would run into several millions.

Now, I do the same with the working people. I say that a good workman is entitled to more pay than a poor workman. And, therefore, wherever it is possible we have our workmen paid for the amount of work they do. I know that is contrary to the general rules of trade-unionism, etc., but it is the proper economic basis that a man shall be paid for the work he does and proportionately to the work that he does. And so I carry this principle through every establishment that I have. The Bethlehem business is now the second largest business in the United States. It was exceeded only by the Steel Corporation last year. Other than that, it was the largest business in the United States, and I give it no more thought or no more attention and not as much as I have to my coming to be a guest of you boys here this evening.

In writing the organization for our establishment I say the President shall have no duties, and shall keep his mind free to survey and direct the whole affair, so as to have it go in harmony. I am so confident of the organization we have got that I find that they do better when the old man is away. I have never yet seen a record broken in any department when I was at all attending to business. It has always been broken when I have been away, when a man has been put upon his own mettle to show what he can do. But I am no boss. I let younger men run these great establishments, notwithstanding the fact that I own the greater part of them. The younger fellows get to learn that if they are successful they can run the old man around. After all, there is nothing so scarce in the world as competent and successful men in the management of a business. There is nothing we are so constantly looking for as that.



Now, to be more practical: A lot of you fellows are going out into life. Let me give you a bit of advice. If you have any influence in the world to get you a start in life, don't use it. The worst thing that can happen to a man is to start life with influence. He has got to do twice as well as the fellow that starts upon his own merits, because, after all, it depends on the general opinion of all those around you as to how competent and successful you are, and when everybody says that you do well because of the influence back of you, then you have got to do twice as well as otherwise. If you are going into any manufacturing establishment, don't go there by reason of any influence you may have. Start upon your own merits, and start in some lowly position, no matter what it is. Be a laborer, if you will. I don't know but that is the best way to start.

A man educated in a great university is ten times the man who has not been educated in a university, if he will only learn that education in a university is not different from education in the workshop. You cannot be aristocrats unless you earn the right to aristocracy. And the aristocracy in the future is not one of wealth or university education, but the aristocracy of the men who have done something for themselves and their fellow men. And that is what will make the real man. That is the lesson that you have got to learn, and that is the lesson that so many of our college boys don't learn. They go into a great industrial or other establishment, and they imagine because they have a diploma from Princeton or Lehigh or Lafayette or some other college or university that they are in a different plane from the other men. Boys, unless you get that out of your heads you are going to learn the sorriest lesson you ever learned, because it won't succeed.

This Great War has taught us many things. The one thing it has taught us above everything else is that the true life is the life of modern democracy and simplicity, that it is not one of show or of extravagance; that we are men, because we are men, and because we have the true instincts of men, and we are not men because we are rich or because we occupy a high social position or because we have influence. Now, that's the thing that boys from universities have got to learn; and they are learning it fast. And this War has taught us more than any-



thing else that it is now in fashion, and it is in the most liberal sense the fashion, to be simple and to be democratic; that the real man is the man that will live in that way and derive more genuine pleasure and satisfaction in the doing of it than he imagined before.

I had a lesson brought home to me here to-day that I have been thinking of ever since. You have here in Princeton the daughter of my dearest friend, Mr. Carnegie, and I went to her home to see her to-day, to wish her the happiness that she deserves. I was the first one to see her but twenty-one or two years ago, and I saw her to-day. With all of her wealth and everything that she might have that the imagination might devise, I saw her living in the simplest of cottages in the simplest and most unostentatious style and the happiest young woman it has been my privilege to meet for many years.

Now, boys, there is an object lesson for all of us. I have a great house in New York. I have a great country estate. About the only pleasure I get out of them is the fact that I have to pay their taxes and have enough money in the bank to do it with. I don't own the estate and I don't own the house. They own me. My secretary made up one day a list of my assets and liabilities. I am not going to tell you what they were. But he had this great estate and house on the side of my personal assets. I said: "You are wrong; they are not an asset, they are a liability. Put them on the other side." So it is, boys. As I grow older I find I want to have simpler things about me, the truest of my old friends. And, boys, if you could know the joy of the long association and companionship with men such as I have known, you would realize that you yet are to have such a compensation for old age as you have no idea of, and you are to enjoy the truest thrills that come to the life of any man.

Now, boys, I have talked to you a long time. I have talked because I love to talk to you, and I see how interested you look. Just one thing more. Go at your work. You may not find yourself the first year. You may start at work that you think will not be agreeable to you. Do not hesitate to change. If you find that it is not according to your tastes and ultimate ambitions, then change and go into something that is more pleas-



ant. No man can be successful at work if he doesn't find the work he has to do pleasant. No man can ever do a thing well that he is not interested in. You boys will find in your classes that you do best in the things you like to do. When you start in life, if you find you are wrongly placed don't hesitate to change, but don't change because troubles come up and difficulties arise. You must meet and overcome and conquer them. And in meeting and overcoming and conquering them you will make yourself stronger for the future.

Then go on and select your work. Let us suppose you become a craneman. Suppose you become a clerk in a lawyer's office. Give the best that is in you. Let nothing stand in the way of your going on.

I am going to tell you the story of a man that came to see me in New York, Charles W. Baker, the President of the American Zinc Company, a very good friend of mine. Thirty years ago, as manager of the Homestead Mills, I went to Cleveland to see some plates that were being made. I got there at six o'clock in the morning. I had telegraphed the Superintendent that I would be there that morning. He was in the office. But, being early in the morning, I went right out to the works, thinking I might see something out there that would guide me in the making of these plates. When I got to the works I found this young man Baker, a stenographer and employee of the office, who had not been directed to go out there, but who thought when the works manager arrived out there he might want somebody to be on hand to meet him, and he was there, the only one that was there. And when I went back I said to the Superintendent: "Watch that young man. When you have a chance give him a chance, because he is in earnest." It wasn't long before Baker got to be his assistant. Later he was agent. Later I made him the general agent of the whole Carnegie Company. Later I made him a partner. To-day he is many times a millionaire and the President of the Great American Zinc Company in New York. That is the story. That one little thing helped him forward.

But don't believe, boys, that you can make opportunities for things like this. That will always fail. They must come naturally, and the only way that they can come naturally is to



give your whole heart, give your whole soul, give your every thought, give your every act to the accomplishment of what you are going to undertake. If you will but make up your mind and determination to go through with what you undertake, you will have done more toward a successful life than you will have done in graduating from this great university, and you will do that which will bring you more genuine pleasure, satisfaction, and comfort in life than anything else you will ever do.



# HARRY COLLINS SPILLMAN

## ADJUSTING OURSELVES TO A NEW ERA IN BUSINESS

This address was delivered before the Twenty-second Annual Convention of the Biscuit and Cracker Manufacturers Association of America, held in Chicago in 1922. Mr. Spillman is manager of the School Dept. of the Remington Typewriter Co. and is well known as a speaker before business and educational organizations.

ELBERT HUBBARD used to be very fond of saying a great many wise men came from New York. He said the sooner they came, the wiser they were, and that has always been my experience when I get out here to Chicago. I always, for that reason, hark back a little further in my experience and come from Kentucky, because I really came via New York from Kentucky, down where the corn is full of kernels and the colonels are still full of corn. Mr. Volstead had made no great change. In fact, a man wrote me from Louisville and said, "Spillman, from one drug store to the next is still the shortest distance between two pints in Kentucky." I wasn't here at the banquet last night, but I understand the same is true here as in Kentucky.

I have been assigned a very high-sounding subject to talk to you about to-day. Down in my native state some years ago a gentleman was sent by the revenue department of the Government to apprehend a very dangerous distiller of moonshine. The moonshiner had killed off all revenue officers that had been sent to apprehend him, so he had made a very dangerous reputation. The Government sent another and said, "Get that man, dead or alive."

He traveled a few days and came finally to a little ravine where the cabin was situated in which the moonshiner resided.



He knocked on the door, and a little tow-headed boy came out. The revenue officer said, "Son, where is your father?"

He said, "Pap is up at the still making liquor."

"Well," he said, "I'll give you a quarter if you take me up to your pap."

He said, "Sure."

"All right, son, get your cap and take me up to your pap, and when I come back I will give you a quarter."

He said, "Mister, give me the quarter now, you are not coming back."

So every time I come to Chicago to talk on this subject I wonder whether I am going to have the honor of coming back. I think I ought to say, by way of supplementing the things said about me, that I am a school teacher as well as a business man. I got most of my experience in the classroom on the side lines of education. I am pleased to see the great changes coming over education, and the longer I live the more truly I recognize education going on outside of the classroom rather than inside of it. Experience is the master school teacher of the world.

You are here to discuss the problems common to your different communities, I am sure, and to exchange ideas in order that each of you may know what is going on in the other's territory. Some time ago I was reading a fable telling the experience of the wonderful rooster that flew out of his barnyard over into the neighbor's barnyard, and he found a lot of fowls that that he didn't have in his own barnyard. For instance, there were geese and turkeys and ostriches. This rooster came upon a very large ostrich egg, the like he had never seen before, and he was so interested that he pecked at it. When he pecked it caused the egg to roll towards his barnyard. He pecked it again and rolled it under the fence, and when he got inside he clucked and clucked and called all the hens around. The hens came up and looked at the big ostrich egg. The rooster said, "Understand I am not complaining at all, but I want you to know what they are doing in other communities."

You are here to exchange ideas and carry back to your respective neighborhoods the point of common interest to each



other. Now, if I need a text for what I am going to say to you this morning, I think I would find it in James Russell Lowell where he said, "New times demand new methods and new men. The world moves on apace and soon outgrows the laws which in our fathers' day were best."

So we recognize in the beginning this morning and have recognized no doubt for a long time that a great change has come over business, a great change has come over education, and we are facing a new world and we must face it with new methods, with new propaganda, and new ideas of selling.

In the Middle Ages everybody fought and talked about religion. In the Renaissance everybody talked about art and literature; and for the last one hundred years humanity everywhere has been busy talking and studying for the most part about one thing, and that thing was mechanical. That thing was the machine; so we have been busy for the last hundred years in a mechanical way making our things better until we stand to-day in that ridiculous attitude of knowing nearly everything there is to be known about things. Having perfected the wheel the inventor of these wonderful devices stands apart from the things invented and is mystified by his own handiwork. We have lived through a great age of horsepower, and you know horsepower is the power of a horse from the neck back. We must develop another kind of power in the era we are living in now—and that is manpower. I believe during the next ten years organizations like yours are going to have a great deal more to say about the manpower of your industry and less about the technical aspects of it.

I heard a great manufacturer say the other day he wished he could make his men as good as his merchandise. I have an idea that the problem before you men here is that you have made the cracker so good, perhaps not perfect, but so much more perfect than the men selling crackers, that there is no comparison between the goodness of the merchandise and the goodness of the men trying to sell the merchandise. I suspect to-day that if your selling organization was on speaking terms with the quality of your merchandise, you would be in a much better way than you are.

Oh, yes, I think we have all the horsepower we need in the



motor. I think we have to get a little horse sense in the drivers. We need that. We need it in the man. The call everywhere is for manpower; give us better salesmen, better men to direct, better production, finer production. Ah yes, I say this nation depends upon its manpower, and your industry depends upon its manpower. I was brought up in Kentucky, if I may refer to that experience again. My uncle was a wagon maker. He made nearly all the common carriers that ran over the foot-hills in which I was born and raised. After my uncle finished one of the wagons he rolled it out in the shop yard and a farmer would come along and say, "I'll take one of those wagons, but I want to know how to keep it in repair."

My uncle would say, "You know I don't have to give you written instructions; all you have to do is put axle grease on the wheels every few weeks and the wagon is all right."

Imagine a man buying a Packard automobile to-day and being told all he needs to do is put a little axle grease on the wheels every few weeks. May I ask you what is the difference between a Packard automobile and my uncle's two-horse wagon. Basically, they are the same. They run on four wheels. Ah, there is a wonderful difference in the automobile because the automobile has fifty oiling places whereas my uncle's two-horse wagon had only five points of contact on it—only five places that ever needed to be oiled at all. The automobile has become so highly ramified in its contacts, there are so many more places for friction, that we have to have ball bearings and piston rings and the very finest oils that we can get from nature to lubricate the contact in the automobile and make it run. I tell you that because I think business has undergone exactly that same change that has overtaken my uncle's two-horse wagon.

To-day you touch humanity in so many more places than you did formerly, you are coming in contact with people and with customers in such a different way to-day that you have to lubricate your selling organization, your machinery has to be more fluent and more highly perfected and skilled than it was formerly.

I want to mention briefly this morning some of these important points of contact in the development of the men who sell your merchandise. I shall have little to say about the mer-



chandise for I know very little about it. I don't think the merchandise is half so important as the men selling it. As I have said, if you can make your men as good as your crackers you are all right. I want to speak about some of these highly essential points of contact in the human machinery of your organization.

The first point I want to mention is the mental contact, the most important perhaps in the beginning—the mental contact. The human machine is much below par intellectually. Your selling organization, your directing organization, your producing organization, all the way through has a big lot of wasted motion in intellectual operation.

Rand McNally says the great American desert is out somewhere west of the Rocky Mountains, but he is wrong; the great American desert is under the hat of the average man. That is where we have the undiscovered country. It isn't out yonder, it is up here. There is where we have the waste motion of the world, gentlemen; there is where you have the waste motion in your organization, not in the wheel and different units that go to make up the whole of your fine product, but I say the waste motion is the loss in the intellectual operation of your men in relation to the customer. Yes, we have made a great mechanical progress, a fine mechanical progress, but we haven't made so much intellectual progress, we are just beginning. When we want to know something for certain we have to go back two thousand years and look it up in the source books. We have certain source books and certain source minds. If it is something about philosophy we go to Aristotle and Plato and Socrates; and if we want to know something about religion we go to the Bible. Those are our source books.

To-day in business we have a few source minds. I don't know who the source minds are in your industry, but I know it is a wonderful thing to be a source mind in the cracker business, to have it said your mental operations are right, that you can be relied upon to be accurate in calculating certain vital issues of this enterprise.

Down in Texas they don't have to make Democrats; they just come on down there one generation after the other. If you know what the vital statistics are going to be on the male



side the next ten years, you know what the majority is going to be. And the same is true of Republicans in Pennsylvania. I am a Methodist. Why? Not because I love John Wesley or understand his theology; I am a Methodist because it runs in the family like snoring and obesity and a lot of other things. Had I stopped and thought out my religion I might have been a Baptist or a Presbyterian, you can't tell. I believe in a large measure we are too lazy to think. Elbert Hubbard said: "We would rather go out and lie down and die than do constructive thinking."

Real constructive thinking—don't misunderstand this. Thinking is something very much confused. The next time you are talking with a man about your line and he has been buying the other fellow's wares a long time, and you know yours are better and he ought to buy yours, he listens to you while you talk, but that isn't a sign he is thinking, not at all. He may even shove his nose glasses on the end of his nose and look into space, and you say, "I have got him thinking all right." He isn't thinking at all, he is just readjusting his prejudices, that is all. I say in a large measure we are too lazy to think.

I read somewhere the interesting report of your meeting last year. People over in England eat a great many more crackers than they do in America. Why? Because they think about crackers, that is why. Whenever you find a man who doesn't think about something, he doesn't understand it; and hear me, the high cost of this proposition comes right here, gentlemen, when a man doesn't think, he doesn't understand and whatever he doesn't understand he opposes. That is human nature the world over. Unless you make that man think in some way, unless you stir up his mind and get his mind concentrated upon the merits of your crackers, you can't sell him.

Yesterday in Omaha I saw a wonderful something that made me think of your business. I know it has been a long time since I have seen as attractive a thing as I saw in Omaha yesterday, and it attracted me because I was going to speak here to-day. It was a very fine exhibit of crackers in one of the big stores of Omaha. It was a wonderful exhibit of crackers. No man went down the street without thinking of crackers, in fact, his mouth watered when he looked in the window. The



boys and girls were looking in because the man had connected the exhibits with Wesley Barry and Jackie Coogan, both playing in a nearby theater on the screen, and they were supposed to like these crackers. That window was built up around local color and the real attractive thing about it was how clean the window and the store were. You know cleanliness is next to godliness, and in a grocery store it is next to impossible.

I say any man, any salesman that can give his customer an idea of how to keep the store clean, how to dress up the window, causes him to think along that line, is working up to the very heart of his own proposition. I know a great man who buys goods in the central states and for years he hasn't bought anything from a salesman who didn't give him a bright idea. He said: "After all, you know the products are pretty good, but I put it up to the salesman. He must give service along the line of ideas. I must have a salesman that thinks and enables me to think, so every time he gives me a bright idea I give him credit for it." That is service.

I want to speak about another contact very vital in the experience of your men. I want to speak about the language contact for a minute. The longer I live how much more certain I am I live by my language. Language is a large asset in my life, a large asset in the life of any man doing business anywhere with anything. Darwin made a great reputation by tracing down the origin of man and saying we sprang from a monkey. I don't know whether he is right or not. I don't care. He said we sprang from a monkey. Somebody said it took five thousand years for a monkey to change into a man, but it doesn't take that long to reverse the process. The point I want to make about that is here: Darwin was tracing the rise of the spark of life and he encountered the missing link and that missing link was a language link. We have made the monkey do nearly everything but talk.

So I say in your speech habits you are always superior to the lower animal order. There are a lot of men who look no better than monkeys and act no better, but they can talk better because they can talk some. Language to-day is the highly personified characteristic of this human machine. Language is a more vital part of the personality of your men and of you



than your eyes and hair are, a far more vital part. I would rather undergo a major operation for anything that ailed me in the body than have my language operated upon. I would rather give up my appendix than the adjectives and adverbs that are necessary to the clarity of my expression. I wouldn't mind having a lame body if I always had a strong language. I would rather have weak eyes than weak words. I wouldn't mind having a tin ear if I might have a silver tongue. I know what men do with silver tongues. I know what salesmen do with vital language. They are go-getters, they are the fellows that deliver the blue vase.

It is very sad, gentlemen, because the thing I am talking about this morning—language—can't be bought, borrowed or stolen. The only way to get it is just to take it for nothing. Yet we stagger along through life and allow our sales organization to be impeded in speech without the language to express the richness of the products they are trying to sell.

A man came into our store the other day to sell me something. I suppose I might have bought if I had known enough about it. Pretty soon I saw he was a language pauper. I backed him against the wall and asked him something about his product and pretty soon he began talking with his hands: "You know, Mr. Spillman, you know," and a great many times I don't know and that is the reason I don't buy.

I wonder how many of the organizations represented here to-day would have delivered more crackers last year than you did if your salesmen could have told men the things they wanted to know in the language they ought to have had to express the richness and fullness of your merchandise.

Words, the power of words! Wasn't it the National Biscuit Company that gave five thousand dollars for a single word? They ought to have been ashamed to have taken it for a paltry sum of money. For many years the National Biscuit Company made the people of America do what they would like to have them do by reason of that word. They haven't preempted all the English language. There are other words as vital as that one to be applied to the nutritiousness of your merchandise. I say it is language. All right, you say, what is the answer for that? The best way, of course, to make your men better—and



there is only one best way—is to make yourself better. The quickest way I know to make men is by being one yourself. Set the example, be it of mind or of language, before your men. All right, how? Well, you are to-day the same man you were the day you were born, plus the men you have met and the books you have read. That is all.

The Bible is the background of the language of all the great advertising experts of the world, and all the great salesmen have read the Old Testament through and through and memorized its language and mastered its philosophy, because it is true to-day. I am recommending it because I know it improves one's language, if for no other reason. The Bible is the paragon book of all books for vitalizing your language.

Sometimes when I want to vitalize my language a little I look in the New York Library. I don't know whether to take down "If Winter Comes" or "Wells' Outline of History," but I know there is always one book I can take down without any chance of wasting time so far as language is concerned. The longer I read the more certain I am that I shall take up last the book I took up first and finish my education in the University of Abraham Lincoln.

There is one other contact I would mention and that is the courageous contact.

A man at Atlantic City was spending his vacation; of course, he met a woman down there as part of his vacation. He was bashful and backward and wasn't making much progress. He was sitting near the ocean with her and she thought she would encourage him, so she took his arm and passed it affectionately around her waist and looked into his eyes and said, "Oh, why don't you kiss me?"

He said, "I would, but I have sand in my mouth."

She said, "Swallow it, darn you, you need it."

The quality of sand is like the yeast in your bread, just exactly. You need good yeast for your bread and you need good yeast for your men, something to make them rise up and be the men they ought to be and do the things they ought to do.

Sometimes our organizations are half dead and half alive, and sometimes they are more the former than the latter. You know



death is a very mysterious something. It is very greatly misunderstood and frequently misrepresented. I want to tell you every man dies twice. He dies once in the spirit and once in the body, and these two departures from life are not always made concurrently. The date on the tombstone isn't the date the man dies. That is the date society took formal note of his departure, that is all. When he has quit contributing to the thought and progress of his time, that is when a man dies. When hope flees from his breast and his mind ceases to adventure, then he is dead. I don't care whether he is buried or not, it makes no difference, he belongs to what we call the unburied dead. Oh, it is a wonderful thing to live a long life and remain vital through it all. We are dropping off too soon in this life. Methuselah lived nine hundred and sixty-nine years without a bath tub, without a tooth brush; he was never X-rayed, manicured or had his appendix removed. He set an example that shames all of us.

We find men like Chauncey M. Depew, vital past eighty, still contributing to the thought of his time, a man wholly alive; so I say in every human heart there is an evergreen tree, and the name of that tree is "Enthusiasm." As long as this tree flourishes I am a young man, whenever that tree withers, whatever my age, I am old. I have lived long enough to know youth and old age are not fixed stages in life to be written down and averaged up by the life insurance company. The life insurance company never lets me forget that some day I will be a very old man. Every man ought to think about it. The life insurance company can tell you the very day you will be old because they have it figured up and you have to pay by that schedule, but thank God you don't have to live by it.

We have always been afraid of something. Fear, you know, is the hallmark of humanity. We began to be by being afraid, that was what made us conscious. When we first recognized the danger around us, we ceased to be animals. I say fear has had a great part in building up society. But we ought now to lay it off. Now that we have fought off animal dangers we ought to act like men and substitute for that quality of fear something that is bigger and better and finer in the human nature, and that is faith.



Why, I have sometimes tried to recall when I first began to be afraid. It is like trying to remember when I was born; it goes so far back into my past. Fear of something has always existed with us. When I was a child I was afraid of the dark, afraid to go to bed; when I got older I was afraid of my school teacher; when I got in the twenties, I was afraid of my job. Some of you men are afraid of your competitors. And through life great fears chain us down and block our way to larger progress and success in life.

I say to you, the human machine, speaking of our nation as well as your industry, needs to build up this vital point of contact with other nations—faith, courage, hope and belief in the things we want to undertake to do. “Verily, verily, I say unto you, whosoever shall say to a mountain, ‘Be thou removed,’ and shall not doubt it in his own heart, he shall have whatsoever he sayeth.” Now, I didn’t write that, but I have a very great measure of respect for that man who did, and when St. Mark said that he meant what he said. I believe every monument and great enterprise erected has been built by some man who believed that statement of St. Mark, when he said a man to remove a mountain only needed to believe he could do it. So I believe in our life to-day, in the cracker business and every other business, we must have something greater in our lives and hearts than we have to-day and have had the last few years.

What do you believe you can do? What about your faith pattern? You say we live in the scientific age. I want to know for certain. We have learned a few facts about the machine and now we want to know the answer for everything. We have come to be too scientific. We are unwilling to take anything for granted any more. Mr. Edison said not long ago, “I don’t know one-half of one per cent about anything.” It is rather surprising that he expects other people to know so much. Edison says he does not know what electricity is. Of course not; probably he never will know. He knows something more important about electricity than to know what it is, he knows what it will do.

I was in Fort Myers, Florida, where Edison invented the incandescent light. I saw the very studio and laboratory in



which he perfected it. He went to the little village of Fort Myers and said, "I have perfected my incandescent light. If you will stretch a wire down the main street of this town, I'll make it the first electrically lighted city in the world." Do you know what they said? "We don't know anything about electricity. We won't have anything to do with it."

Sometimes it is hard to be an optimist. Recently I was riding down the street in New Hampshire to fill an engagement. I looked out the car window and saw one of the Rotary signs—those great, inspiring Rotary signs put over the United States. I looked out the window and said: "Let me see what this one says." It read: "Work hard; buy what you need; prosperity is just around the corner." Then the car turned at right angles, on the left I saw a graveyard, and on the right a county jail. I say, gentlemen, I believe it pays to have that attitude of mind.

A man came into my office to sell me life insurance, and after I had bought a little policy I said: "Old man, I meet a great many pessimists. How do you find the life insurance business?"

He reached in his pocket and said: "Mr. Spillman, it isn't so bad. Here is a policy I wrote yesterday on one man's life for five million dollars."

I said, "One man?"

He said, "Yes, one man. Five million dollars; count the ciphers; they are all there."

I said, "Lay it on my desk; my contact with money is largely academic."

He laid the policy down there. He said, "Mr. Spillman, I wrote so much insurance yesterday on one man's life that all the insurance companies in America are not big enough to write it. I have got to go to Europe to get it underwritten."

I know a lot of life insurance agents starving to death in America to-day.

I said, "Mr. Rosen (for it was the great expert, Mr. Harry Rosen), I am speaking to a great many sales forces in America. I wish you would tell me how last year you wrote eighteen men for one million dollars or more, and the average insurance salesman is happy if he can write a quarter of a million all year."

He said, "I am not a genius at all. If there is a reason that



"I am better it lies here: I expect in large units. I taught myself a long time ago not to be satisfied, so I don't toy in my mind with small amounts, I think in large terms. No life insurance company has set a quota for me that I haven't been able to make."

Contrast Rosen's mental habits with those of another salesman to whom I said, "Did you get all the business last month you ought to have gotten?"

He said, "I didn't get all I expected to, but then I didn't expect to."

Gentlemen, I know no formula for failure that is so unfailing as that. Blessed is the man who expects nothing, for he shall not be disappointed. If I could only know what you are expecting, if I could only know about your faith contact with society, with your men, and with the world at large, I would prophesy something about the growth of the business. May I tell you what I expected once, as I come to the close of my address?

I was born and brought up in Kentucky, as I told you, in a little town of one thousand inhabitants. My North and South poles were on the same street, one off the school house, and the other by the court house. But I wanted something. Ah, yes, God was very kind to me when he put in me the desire to want things. I have always had a burning desire to get something. My wants haven't always been outrageous. Some of the things I wanted in life I got. The first thing I wanted I got. As I grew up in this little town I wanted something—I wanted a roll top desk. That is what I wanted so all my desires and ambitions were centered around this desk.

There was just one roll top desk in my whole world, and that was in the office of the bank president. He had the luxury of a roll top desk. I wanted that desk, oh how I wanted it! I wanted it so badly I used to stand before the bank of a night, and I guess I lost the sale of a good many papers, waiting to see the president lowering the mechanism of that roll top desk. If I had had the roll top desk, all things would have been added unto me. The important thing was that I began to expect it.

I hadn't been doing that very long until I went to my mother's millinery store one day and found an old fashioned spool case she had thrown out. I said, "Here is the foundation, here is



the beginning of my roll top desk." I took it to our cottage and got a chisel and hammer and saw and went to work on it. Many nights and days I labored on that desk. When I finished it, it was very crude, no paint, no lock. You wouldn't have it, but I look back upon the desk to-day as the finest piece of craftsmanship I have ever been able to build.

Then I said, "What will I do with it?" One of the neighbors said: "After all the roll top desk you have talked about to the neighborhood, you have got it, and what are you going to do with it? You haven't anything to put in it, no mail. You never get a letter."

I decided I would have to get a lot of mail. The banker got a lot of letters, ripped them open and filed them away. So a traveling man came along and I said: "You have been to Louisville, Nashville and Cincinnati, maybe you can tell me something. I have an ambition to get a lot of mail. I have a roll top desk and nothing to put in it, can you tell me how to get a lot of mail?"

He said, "Yes; I'll give you a bright idea, and won't charge you for it. Send your name away to Sears Roebuck and Montgomery Ward."

I sent my name away to Sears Roebuck and Montgomery Ward and they sent me catalogs and circular letters. Soon I began to get a remarkable mail. I guess the post office had its class changed because I got so much mail. We had a tri-daily mail service, very well named tri-daily; that is, the train went to the main line junction every morning and tried to get back that night. It couldn't always make it. Many nights in the winter it was midnight when it came in. It never found me dead; I was always at the post office waiting for my mail.

I took my circular letters home and filed them away and answered them as though I expected to buy something. I have a secret. All the months I carried on that heavy correspondence with Sears Roebuck and Montgomery Ward I never bought five cents worth of merchandise. That is hard on Sears Roebuck and Montgomery Ward. They lost a lot of money on me.

A few years later when I got to New York and walked down Broadway and turned into the headquarters of a twenty-million-dollar corporation and got a good job which I had been writing



about, the manager took me to the third floor and said, "Mr. Spillman, this is your office and there by the window is your roll top desk."

"Verily, verily, I say unto you, whosoever shall say to a mountain, 'Be thou removed'; and shall not doubt it in his own heart, he shall have whatsoever he sayeth."

Then may you never lose courage, man with a mind,  
Hope is a better companion than fear;  
Providence very benignant and kind,  
Gives with a smile what you take with a tear.  
Face to the light, for all must be right;  
Morning is ever the daughter of night;  
That which is dark must be that which is bright.  
Stand in the van and fight like a man—  
That is the bravest and cleverest plan.  
Trust well in your cause and do what you can.



## MAX D. STEUER

### CROSS-EXAMINATION, IS IT AN ART OR AN ARTIFICE?

Mr. Max D. Steuer is, in the opinion of many, our greatest jury lawyer. In this remarkable speech discussing cross-examination one may suspect that he is drawing freely from his own experience. The speech was delivered at the 43d Annual Meeting of the Missouri Bar Association, St. Louis.

MR. PRESIDENT AND GENTLEMEN OF THE MISSOURI BAR ASSOCIATION:—I find it extremely difficult to make appropriate acknowledgment of the very great compliment that has been paid me here this afternoon in the remarks of your President and Mr. Hocker. When I received the invitation from your President to come to address you, in the exuberance of the moment, little contemplating what I was letting myself in for, I immediately wired my acceptance. When the day was approaching for the event, I began to feel the fear that is now embarrassing me. I have not come here to deliver a speech. This will be a rambling talk on subjects with which you are at least as familiar as I am. Several of the newspaper men who are here asked me to furnish them with a manuscript of my address. I told them, as I tell you, there is none. I have never taken myself sufficiently seriously to write a speech on any subject. I have always considered it dangerous from more points of view than one. If you write a speech and read it, experience tells that the last pages are generally read to the writer [laughter]; if you write a speech and commit it to memory, there is always the possibility of forgetting it in the midst of delivery. Then the speaker is lost.

In New York, we have a very popular after dinner speaker in the person of the Reverend Doctor Stires. He was deliver-



ing a speech at a banquet one night. At the outset, he said to the assembled guests that before speaking upon his text, he wished to offer a toast. Raising his glass and looking toward the balcony where the ladies were to be found, he made a grand sweep and said: "To the ladies. To the ladies. To the ladies. The best part of my life I spent in the arms of another man's wife—my mother."

There was an Englishman on the platform who was to be the guest at a banquet a week hence. About ten minutes later, the sentiment which Dr. Stires had uttered reached him [laughter] and he applauded. Then he whispered to his neighbor: "Next week, I am going to be a guest at a banquet. That is a great toast the doctor has given, and I will repeat it in his very words when I am called upon to speak." His banquet, in good time, came on, and he had been praised by the speakers much as I have been here, and finally was introduced to his audience. He said: "Ladies and gentlemen, before I take up the text of my address, I wish to offer a toast that I heard in New York about a week ago," and raising his glass in imitation of Dr. Stires, he made a sweep toward the balcony and said: "To the ladies. To the ladies. To the ladies. The best part of my life I spent in the arms of another man's wife—[hesitation]—By Jove! I forget her name!" [Laughter continuing and applause.]

In the outer room, a few moments ago, one of your members informed me that you have already listened to two addresses to-day. One was devoted to an expression of regret over the moral decline of the Missouri Bar. The second enlarged upon its ignorance. You are not at all unique in being thus addressed. Not only the Bar of New York, but the Bar of the country has, in the last few years, been treated to similar criticism. So you see, we can all sympathize with one another. Personally, I fail to understand any man, whatever his station, particularly if he be a member of the Bar, who entertains or expresses the view that the Bar of to-day is of a moral caliber or intellectual standing lower than the Bar of yesterday. Such a person, however exalted, is, nevertheless, ignorant of the history of the Bar. No well informed person would venture the assertion that there ever was a period when the American Bar



was as industrious, as intelligent, as capable, as courageous and as patriotic as is the American Bar at the present hour. I did not come here to discuss the moral standing or intellectual fitness of the present day Bar, but because of the utterances that have recently been made, so unwarrantably in my opinion, I will pause for a moment to call your attention to some of the conditions that existed at the New York Bar twenty-five or thirty years ago, only because I deem them typical of the Bar of the country and amply illustrative of the moral and intellectual advancement that has been made.

Our lowest courts of criminal jurisdiction in those days were presided over, as they are now, by magistrates. At the present time, one of the essential prerequisites to becoming a magistrate is active membership at the Bar for at least five years. In the period of which I speak, the magistrates were not required to be members of the Bar—very few of them were—and those who were had not been elevated to the Bench by reason of any professional eminence, but rather because of their political misdeeds. A number of the magistrates were keepers of saloons, dens in which much of the crime committed in the city was planned if not executed. The duty of the magistrate was to determine, in the first instance, whether the crime was committed and whether there was probable cause to believe that the accused committed it. It is not necessary for me to point out to this gathering, nor, indeed, to any other, the beneficial consequences of the change that has been made. I fear that when the crime with which the accused was charged had been planned in the saloon owned by the magistrate before whom the inquiry was being conducted, it was rather difficult to persuade the magistrate that a crime had been committed; much more difficult to convince him that there was probable cause to believe that the accused had committed it.

Our civil court of smallest jurisdiction was in those days known as the District Court. The judge, in order to be eligible for the position, had to reside in the judicial district. Territorially, that district was not large. The business of the courts, while rapidly growing, was not sufficient to keep a judge busy. He was permitted to practice in all the courts except the court of which he was a member. If the business



of the court interfered with his practice, it was quite customary to neglect the business of the court. But a much greater evil resulted from quite a different cause. In each judicial district there was a political club of which the judge was often the head or leader. Most of the members of the Bar, if not all, in the judicial district who practiced in the District Courts were members of the judge's club. Most of those men did not try their own cases in the upper courts or courts of record. Frequently, they retained the judge of the District Court to try those cases for them. These attorneys, when retained in a case over which the District Court had jurisdiction, instituted the action in the district where the particular judge presided. While it was a requirement to confer jurisdiction that either the plaintiff or defendant must reside within the district, this difficulty was readily overcome in an instance where the proposed plaintiff did not reside in the district, by assigning the cause of action to some one that did. Thus, the favored lawyer brought his case before the favoring judge. Is it necessary to point out the consequences that ensued from the existence of such a system? To-day, in the court which is the successor of the District Court of that day, the judges rotate every month, changing the district in which they preside. No longer is the judge permitted to practice in any court. The iniquities perpetrated in those courts while they existed are no more. Even in our courts of highest original jurisdiction in those days, calendars were made up for each judge sitting in a separate part. One could thus tell weeks in advance of the trial before what judge the case was to be heard. Not infrequently were cases adjourned so as to be brought before a particular judge. Indeed, it was even suggested that arrangements were frequently made with the clerk of the court by which cases appeared in a particular part of the court. From a knowledge of the part in which the case was to be tried, followed the opportunity of becoming acquainted with some, if not all, the jurors that served in that part. Since those days, the calendars are called in only a few of the parts of the court and assigned to the different parts for trial on the very day the trial is to begin. The abuses which were possible, resulting from the old system, are no more. These conditions were just as true in the criminal



courts of record as in the civil. District attorneys throughout the state and their assistants, federal and local, were not only permitted to practice in all the courts, but did so. The moral advancement of the Bar has been such that even where they are now permitted to practice, it is not done. The district attorney will not practice himself and will not appoint any assistant who does not agree to abstain from trying cases during his incumbency.

These are but few of the evils that existed. They reflect, in my opinion, the moral conditions that pervaded the courts of that day. A substantial improvement in that regard, in both Bench and Bar, has been made, and this, I am sure, is true not merely in New York, but throughout the country, if not the world. If indeed, the Bar of previous generations was altogether free from moral delinquency, how does one account for the public antipathy to the lawyer when Jack Cade's men were applauded for beheading all the lawyers they could find in England?

Montaigne expressed the contempt of his day for the legal profession by styling it: "The fourth estate of wrangling lawyers." Voltaire recorded the sentiment of his day toward the profession in the words: "Conservators of barbarous usages." Wordsworth described the fine feeling for the Bar when he declared:

A lawyer art thou?  
Draw not nigh,  
So, carry to some fitter place  
The keenness of that practiced eye,  
The hardness of that sallow face.

Johnson solemnly spoke:

God works wonders now and then,  
Here lies a lawyer, an honest man.

The law schools of to-day, by reason of their higher standards of educational prerequisite for admission and their very greatly improved method of instruction, make for a greatly improved Bar. The examinations which the applicants are required to



take constitute tests, if not sufficiently great, certainly much more vigorous than in times past. The Character Committees before whom the applicants appear, even after they have passed their Bar examinations, and to whom they must submit a practical history of their past lives, make for higher integrity in the profession.

The vigilance of the disciplinary committees of the Bar associations, local and state, much greater now than ever before, helps to keep the standards of conduct high. The knowledge that the privilege rests in a branch of the court to summarily disbar the practitioner, has its effect upon even the weaker members of the profession. The keen competition that exists because of the great numbers in the profession has helped to improve both the intellectual and moral standards. Now that each lawyer is supplied almost daily with the reports of the current decisions in all the courts, the necessary consequence has been that the lawyer of to-day is better informed, in the law at least, if not generally better informed, than his predecessor in the profession. The fact that lawyers are not lacking in number, if it has not increased the industry and kept it at its highest pinnacle for fidelity and loyalty, certainly has not tended to reduce it. Is it not strange then that among the members of the Bar and Bench, those who ought to be acquainted with the ordeals of the man who goes into the court, the man who trembles each time that he does go in, always fearing, always wondering, always hoping, fearing that he cannot do his cause justice, wondering if he is really fit for the task, hoping that nothing will remain undone that should have been done—is it not strange, I repeat, that those can be found within our ranks who will speak of a class of men, who by reason of their loyalty to principle and their devotion to a client's cause, lose sleep and health, who give themselves all that there is to give, making the sacrifice without thought of the financial emolument, not alone for the sake of the gain to the client but more largely by reason of a burning desire to be helpful in the administration of justice and to bring about its triumph;—is it not strange that those can be found who will speak disparagingly of him? To speak of the moral decline of the men who from the day of the birth of this country



have borne the most and the greatest of its burdens, have filled its high offices in the state and in the nation, and by faithful service and patriotic sacrifice have fully vindicated the confidence which has been reposed in them, seems to me to evidence not only ignorance of the real conditions of the Bar but sacrilege also. Rarely, very rarely, has the lawyer been found disloyal. Why is it then that so frequently, even in our midst, those who are called upon because they have reached positions of distinction in the profession, lend themselves to the fashionable utterance of the day by thoughtlessly arraiging the entire Bar, charging it with moral decline and intellectual lack because of the failure or misconduct of the few? [Applause continued.]

I say to the men and women of your state that if the members of your Bar were counted and an equal number were carefully selected from all the other professions and of the other different walks of life, a consideration of courage, ability, learning, industry, honesty, loyalty and patriotism, would disclose that the members of the Bar would compare favorably with those so selected.

All of this is far removed from cross-examination. It does seem like bearing coals to Newcastle that I should talk to you upon that subject. Your experience and reading thereon must be much the same as mine. What is the purpose of cross-examination? What is the result one hopes to achieve? Analyzed, must it not be to destroy the witness or the story told by the witness, or both? Oftentimes it does happen that the story told can be shattered, although the witness does not seem to have been reflected on; other times, that the witness is destroyed, though the tale told by the witness is not even referred to; and still others, that both can be destroyed. What then does one mean when one speaks of destroying a witness without directly attacking the story told? I take it I can best convey my meaning to you by giving you an illustration.

When Secretary of State Hughes was Governor of the State of New York, he conceived it to be in the best interest of the people that horse racing should be abolished. Many com-



plaints, it was said, had reached him from mothers, wives and employers that wages were dissipated at the race track before the earner reached his home with them. In consequence, he caused to be introduced in the legislature of the state a bill abolishing racing within the limits of the state. The racing interests had large investments that would be seriously affected by this piece of legislation. They bent their best efforts toward its defeat. The Governor and his friends put their energies to the task of seeing the bill passed. It finally came on for vote in the Senate of the state. The vote was about to result in a tie when a member of the body by the name of Otto G. Folker was brought in on a stretcher, and cast the vote that carried the bill. He was hailed as a hero. Many of the papers throughout the state spoke of his having risked his life to save the bill. Governor Hughes made some very complimentary comments upon his action. At the ensuing election, Folker was elected a Congressman from the State of New York. There had been a very considerable claim that large sums of money had been sent to the legislative halls and had been used in the effort to defeat this bill. The statement was frequently made that members of the Senate had been bribed. The rumor persisted until finally, for its own vindication, the legislature appointed an investigating committee. It was in session a long time. Clamor concerned itself with one Gardner who, some years prior to the introduction of this bill, had been a member of the Senate. The claim was that he had been the distributor of the money. A number of people were sought as witnesses. Gardner was among those missing. While the committee was still in session, he was found in Wilkesbarre, Pennsylvania, and brought back to New York by the then incumbent of the district attorney's office in the County of New York. Before that committee, Mr. Folker, then a Congressman, appeared and gave testimony to the effect that while he was on a train riding between Albany and New York, Gardner had asked him, Folker, to step into his drawing room, and while they were thus alone, had tendered him \$3,000 to induce him to vote against the bill to abolish racing. The chief assistant district attorney of a neighboring county told that Gardner had confessed to him that \$500,000 had been used with members of the legis-



lature, and that he, Gardner, had distributed a substantial part of it among the Senators.

The person in whose house Gardner had been found at Wilkesbarre testified to a similar admission. Gardner was indicted and brought to trial on the charge of attempted bribery of Folker. Folker was the chief witness against him. It must be borne in mind that he came to the stand as a Congressman of the United States. His alleged heroic act of being brought to the Senate on a stretcher was still in the public's mind. Upon his direct examination, he told of the interview with Gardner in the latter's compartment on the train. No one was present but Gardner and himself. Gardner alone could contradict Folker as to what took place at the interview. Folker was corroborated as to the fact that Gardner had asked him to step into his compartment. After Folker had testified to the interview, he was promptly turned over for cross-examination. That Gardner had a compartment on the train, that Folker was for a while in Gardner's compartment could not be disputed. Was there much chance for any cross-examiner to make Folker contradict himself as to what transpired in this brief interview during which he indignantly spurned Gardner's offer? Your experience answers that. The examiner spent some time in developing from Folker the incidents of his early life. Folker's version seemed very favorable to himself and was well told. It should be stated that at this time Folker was a member of the Bar. He was not a graduate of any university. Consequently, in the State of New York, he could only be admitted to the Bar by passing what is known as a regents examination. A certain number of points are required in order to obtain a regents certificate of eligibility for examination for admission to the Bar. Such a certificate had been issued to Folker. Inquiry and search had disclosed that neither Folker's regents examination papers nor his Bar examination answers could be found in the records. His were the only papers that were missing of the years during which he took these respective examinations. A card record, however, of the subjects in which Folker was examined and the percentages by him obtained was found in the files of the Secretary of State of New York. Upon his cross-examination, in developing his early life, Folker had



stated that he was brought to New York after he had reached what is known as the gymnasium in Germany. Immediately after his arrival in this country, he went to work. All his subsequent education was acquired in our night schools. He had never studied or learned French. He neither spoke nor read French and could not translate French into English or English into French. He had no acquaintance with logarithms; he did not know to what science they belonged. He claimed to be very proficient in German. He was sure he did not take an examination in French or in logarithms. He was positive he took his examination in German. He did not remember where he took his regents examinations. He could not recall the name of any of the examiners. There was no person in the room at the time whose name he could give. He was certain there was no other Otto G. Folker in New York. He had no relative of that name. There was no other member of the Bar of that name. Only one Otto G. Folker had ever taken a regents examination in the State of New York. He was certain he was that one. The card recording the subjects in which Otto G. Folker was examined disclosed that that individual was examined in French and received over 95 per cent. He was also examined in logarithms and achieved a percentage over 95. He was not examined in German. It developed that the regents certificate was delivered at an address at which Folker never lived, in which at first he claimed he had never been. After considerable refreshing of his memory, he recalled that he knew a young man who lived at that address. It developed that this young man was a student at the College of the City of New York. In the whole five years of attendance at that college, this young man was only absent on two days. Those happened to be the identical days on which Otto G. Folker took his regents examination. It also developed that the receipt for Folker's regents certificate given to the State Department was signed "Otto G. Folker" in the handwriting of this young man and not in the handwriting of Otto G. Folker.

There was grave doubt created by Folker's cross-examination as to whether he had ever passed a Bar examination, although the records disclosed that Otto G. Folker had passed. The papers, as previously stated, were missing. Folker also



found difficulty in explaining how he had obtained \$20,000 which had been deposited to his credit during the time that this racing bill was pending. This case was tried in December. Folker, on the witness stand, had perspired so freely that the examiner loaned him two handkerchiefs. At the conclusion of the cross-examination, not one word had been asked about the interview between Gardner and Folker on the railroad train, which was the basis of the indictment. When Folker left the court room, he was still a member of Congress of the United States. Congress was at that time in session. Since the time Folker left that court room, he has never been heard from nor has anyone seen him. The effect of Folker's cross-examination was to acquit the defendant.

I mention this incident only to illustrate that it is well to have in mind that if an interview is so staged in the course of a trial that mere denial would result to the great disadvantage, by reason of the position of the parties or otherwise, to the person denying, it might prove of value in cross-examining, to make a greater effort to destroy, by collateral inquiry, the credibility of the witness than to attempt to attack the story told. Of course, it is to be borne in mind that the answer of the witness to these collateral matters cannot be contradicted by direct evidence, so that the examiner must be certain of the accuracy of his attack and its destroying effect before he begins.

What does one mean by the suggestion "destroy the story, even though you do not attempt to reflect upon the character of the witness"? Again, I feel that I can best demonstrate my meaning by an illustration.

We had a case some time since in New York where one hundred and forty-seven girls were burned to death in one loft. At the time we had a law on the statute books called the Factory Act, which made it a misdemeanor for a factory door to be locked during working hours. It didn't make any difference how many factory doors there were in this one loft, every exit and every entrance had to be kept unlocked during the working hours.

In this particular loft there were two entrances about a block



apart; one would have been in that corner of this room and the other in the opposite corner. One was what is called the Greene Street door; the other was what is called the Washington Street door.

On a Saturday afternoon during working hours in this loft flames were discovered, and before that fire was extinguished, as I said to you before, one hundred and forty-seven girls perished in that loft.

We had and have a statute in New York which provides that if in the perpetration of a misdemeanor death results, it makes the crime a felony, and it becomes manslaughter. The proprietors of this factory were indicted on the charge of manslaughter some twenty-five or thirty times, the reason for the number of indictments being that in each indictment there was a different name of a deceased girl.

The trial of these two men came on. It would be interesting, but much too prolonged, if I could recall to you all the incidents of that most dramatic trial. Suffice it to say that the District Attorney had called one hundred and nine witnesses, and then, making a solemn pause and having brought about a complete hush—and up to that moment, I should say in passing, the name of the girl that was mentioned in the indictment as having lost her life had never passed the lips of a single witness; and we were in hope, high hope, that the District Attorney intended to rest upon the fact that he had proved that this girl was in that factory and that she had not been seen subsequent to the catastrophe, and that he had no evidence, because the bodies of these girls were so charred that identification was impossible, that this particular girl was seen to have come to her end in that fire—I repeat he had brought about a dramatic hush. One hundred and nine witnesses had been examined; and he announced to the court that he had but one more. Then he turned to the other end of the room and said, "Bring in Rose Schwartz."

The doors to the court room opened at a considerable distance from the jury box; each juror naturally was looking in that direction. There came through the doors a simply dressed, beautiful little girl, who was led to the witness stand and sworn, and after she had testified that she had worked for the de-



endants and worked on the day of the fire, and had pointed out on a chart of chairs the particular chair that she had occupied, and had given other details leading up to the occurrence that she was about to describe, the District Attorney said to her, "Now, Rose, in your own way, in your own way and in your own words tell the jury what you did and what you said and everything that you saw from the moment that you first saw flames"; and then Rose told in substance as follows:

The name of the girl mentioned in the indictment was Sadie Goldman. Rose said that she, Rose, was seated at her chair and she heard the buzzer in the factory which indicated the quitting hour; that she looked up and then she saw coming from the direction of the Greene Street door a flame, whereupon she looked over toward the Washington Street door and, as she looked toward the Washington Street door, she saw a crowd standing there, so she started for the Greene Street door hoping to skirt the flames; but as she started for the Greene Street door the flames spread the width of the loft, so she turned back and looked once more toward the Washington Street door and, as she looked, she saw that there was a girl who had her hands on the door knob and that she was turning it, first to the right, and then to the left, and then pulling, and then pushing, but the door would not open, and then the girl screamed, "My God! The door is locked!" With that Rose said she ran to the window, as many others had done, but when she got on the sill—and this was on the eighth floor—she looked down and saw the great distance, she became frightened and came off the sill again and stood on the floor, and glanced once more toward Greene Street, and seeing that it was one sheet of flame, started again toward Washington Street; and then she saw that from the Washington Street door the girls were running toward the windows, and the road became clear and she saw Sadie Goldman, with both hands on the door knob, turning first to the right, and then to the left, pushing the door, and pulling the door, but the door would not open, and the flames kept approaching. She ran to another window, looked out again, became horrified at the distance, came back to the floor and looked toward the Washington Street door; and there she saw Sadie Goldman again, squirming, holding the door knob,



turning and shaking and pulling and pushing it, but the door remained closed; then the flames enveloped Sadie Goldman, and she heard a scream, and she saw Sadie Goldman drop. She covered her face, but only for a moment, she did not know how long; when she looked up again, to her amazement, she saw Sadie Goldman, in flames, struggling once more with the door knob, getting her hands actually on it, and then falling down for the last time encompassed by the flames, and that she herself became unconscious and saw no more.

I cannot describe to you, gentlemen of the Missouri Bar, the pathetic picture made by that little girl. I cannot reproduce the tears that were running down her cheeks, nor can I tell you how the eyes of the twelve jurors were riveted on her and how they sat craning forward, thrilled by this girl's story and how they wept while she told it. Then, after a long, dramatic pause, looking in silence at her, the District Attorney turned and said, "You may [pausing slightly] cross-examine."

Did you ever hear a District Attorney say, "You may [pausing slightly] cross-examine"? [Laughter.]

You know, if he didn't say that you may [pausing slightly] cross-examine, you wouldn't know it. Such a thing would never occur to a person who is experienced in trials, that he has the privilege of cross-examination unless the district attorney graciously announced it. [Laughter.] When they feel that the defendant is already on the train, and that the whistles are tooting and that the next stop is Sing Sing, then they become very gracious, and say, "You may [pausing slightly] cross-examine." [Laughter.] Who understands a dilemma of that kind and could describe it better than my distinguished friend Hocker did in his comments to you? What examiner can tell under those circumstances what to do? Can any preparation put you in the state of mind to determine? There are many times, many times when a witness has given evidence very hurtful to your cause and you say, "No questions," and dismiss him or her in the hope that the jury will dismiss the evidence too. [Laughter.] But can you do that when the jury is weeping, and the little girl witness is weeping too? [Laughter.] That is the question. While there is no rule of conduct which tells you what to do, there is one that commands what



not to do. Do not attack the witness. Suavely, politely, genially, toy with the story.

In the instant case, about a half an hour was consumed by the examiner in finding out whom this little girl had seen, where she had lived, how she had been maintained, and where she had been during all the interval since the fire up to the time she was brought to the witness stand; very little progress was made; but the tears had stopped. And then, she was asked, "Now, Rose, in your own words and in your own way will you tell the jury everything that you did, everything that you said and everything that you saw from the moment you first saw flames."

The question was put in precisely the same words that the District Attorney had put it; and little Rose started her answer with exactly the same word that she had started it to the District Attorney and she finished it with precisely the same word that she had finished it to the District Attorney; and the only change in her recital was that Rose left out one word. And then Rose was asked, "Didn't you, in answering this question now, leave out a word that you put in when you answered it before?" And she said, "Did I?" and the examiner said, "I think you did." So Rose started to repeat to herself the answer [laughter], and as she came to the missing word she said, "Oh, yes!" and supplied it; and thereupon the examiner went to an entirely different subject and spent about thirty minutes more on that, when again he said, "Now, Rose, would you in your own way and in your own words just tell the jury everything that you saw, and everything that you said and everything that you did after you first saw flames?" And Rose started with the same word and finished with the same word, her recital being identical with her first reply to the same question.

The jurymen were not weeping. Rose had not hurt the case, and the defendants were acquitted; there was not a word of reflection at any time during that trial upon poor little Rose.

I just hold that out to you not because I recognize any art in it, but to suggest when there comes a critical situation, and you don't know what to do, why, just do anything [laughter],



because the situation is so bad it can hardly be made worse. [Laughter.] You may attack the story in any way that occurs to you. To attack the witness will likely prove disastrous.

Now, what does an examiner mean when he speaks of destroying not only the witness but the story as well? Again, I will endeavor to illustrate:

We had a case in New York wherein a broker was suing for a very large commission on the sale of real estate, and a janitress took the witness stand. Reading from a little diary, she said that on the 28th of December the broker, the proposed purchaser and the owner, the defendant, all came to her little apartment which was on the ground floor of the building in question, and the owner asked her to show the proposed purchaser through a number of the apartments.

It was right near the noon hour, and she demurred about going because her two boys were expected from school and she wanted to serve them with their lunch; but the owner insisted, and she went with the broker and the purchaser, showed them through a number of apartments, and when they came down the purchaser said, "Mr. So-and-so, I am entirely satisfied with the property and I accept it on your terms." Whereupon the owner turned to the broker and said, "I congratulate you; you have earned your commission."

In New York there is a habit that the selling owner has of always congratulating the broker [laughter] and telling him that he has earned his commission. [Laughter.]

Well, later, according to the story, he seemed to undergo a complete change of heart when time came for payment. Even that happens in New York. [Laughter.] So the broker had nothing left but to have recourse to the courts; and this suit came on, and he told this story and corroborated himself by his little memorandum book as to the date, the time, what was said, and everything else. And these brokers, they know their stories, and know how to tell them; this is one of the instances referred to by my distinguished friend Mr. Hocker when he said there may be times when cross-examination hurts. At any rate you can take it from me because I suffered somewhat, that he was not much hurt on cross-examination. And then



came the janitress; she went back on the owner and she told this incident in manner and substance as I have detailed; cross-examination did not discredit her story nor her. Then came the elder boy, a fine looking young chap, an upstanding boy of great promise; he went on to tell this same story, and added to the story that he and the little brother were detained in getting through lunch, so, after they had finished it, they ran back to school. He ran faster than his brother, so he got to school in time and was marked early; but the little chap could not run so fast, so he did not get there in time and was marked late.

There was no damage done to that boy.

Then came the younger boy; he told the same story about running back to school, getting there and being marked late.

I asked the younger boy, if it had not been for this incident of being late, whether he would have had any other way of recalling the occurrence, and he said he remembered the conversation; he also remembered the date. He remembered it because his mother mentioned it in connection with something that had occurred.

Then I asked the court for leave to recall the plaintiff, and had the plaintiff produce his little memorandum book and there in his little memorandum book was recited the occurrence, even the date, December 28th; and right below it was the next incident under date of December 29th.

Then I recalled, with the permission of the court, the mother, the janitress, and asked her how it was that she happened to make a note of the date; she said that she kept a diary; it was necessary to keep it because under each date she entered the rents as she collected them; she remembered a particular incident that had occurred at this very time when she made this entry under that date.

Then, with the permission of the court, the elder boy was recalled, and I said, "You have heard what your mother said and what this broker said, and you remember what you said." He said, "Yes." I said, "Now, would you mind explaining to this jury how it was that on the 28th of December you ran back to school in time to get there early, when all the schools were closed between Christmas and New Year's, and in that



particular year December 28th fell between Christmas and New Year's?"

That, to my mind, is a typical illustration not of art, but a destruction not merely of the story, but of the witness who told it.

You realize, of course, that however conceited and foolish I may become by reason of the character of my introduction to you, I did not expect to tell you anything new about the art or the artifice of cross-examination, whichever you determine it to be. I came, and was glad to come, because I wanted the opportunity of meeting the members of the Missouri Bar; and I have met them. I have talked to you about this subject only because, unfortunately, on occasions like this there must be talking done on some subject; it seems to be a custom.

I recall that Walter Hines Page, of speeches that were made in England, wrote to President Wilson that they are oftentimes like eggs. "You don't need to eat the whole of an egg nor hear the whole of a speech to know that it is bad." [Laughter.]

There is a French proverb which says that any old place in a speech is a good place to stop. If, as far as you have gone, you have made a good speech, it is a good place to stop; and, if, as far as you have gone, you have made a bad speech, it is a hell of a good place to stop. [Laughter and applause continuing.]

I have been told since coming here that you were so gracious to the trial bar of New York some years back as to invite Martin W. Littleton to be your guest. So many nice things have been said to me of him and his speech, I am tempted to tell you just a brief episode about him, which I trust will amuse you.

We had a man in New York who has lately passed away and who was just as popular as Martin and just as capable. They were among the best after dinner speakers in New York. You have probably heard Job Hedges; if you haven't heard him, you have heard of him. They were both invited to speak at the same banquet, and Job Hedges spoke first. After talking about an hour, Job said, "I have finished my speech; now I am going to make Martin Littleton's speech," and he started all over again and spoke for at least an hour more. All the time



Martin sat there chafing at the bit. Finally Job said, "Well, now I have concluded Littleton's speech"; and sat down. Then the presiding officer introduced Martin Littleton.

Martin said, "My time has been taken up, and I know that you are too weary, after having listened to Job, to want another speech; I will ask you to tarry while I tell you of an episode in my father's life.

"I was born in the mountain district of Tennessee, and, among other things that my father did down there, was to raise hogs. One day my father was out in front of the house, feeding whole raw carrots to the hogs; a neighbor passed by and said, 'Mr. Littleton, that's no way to feed carrots to the hogs.' My father said, 'No? How do you feed carrots to the hogs?' He said, 'Why, Mr. Littleton, you boil them, and you slice them, and then they digest them much more quickly.' And my father said, 'What's time to a hog?' [Laughter continuing.] I realize that I have taken too much of your time."

I cannot begin to tell you how much I appreciate your invitation, your cordial reception, and your very, very kind attention. I know that it was no personal compliment; I know it was intended as a compliment to the trial bar of the great State of New York. Gentlemen of Missouri, if I have done justice to that Bar, I am very, very proud; if I have failed, I am nevertheless elated at having been with you.

[Applause continuing. The audience rises, continuing to applaud until reseated by the President.]



# HARLAN FISKE STONE

## THE TRAINING OF LAWYERS

Harlan F. Stone was born in New Hampshire in 1872, graduated from Amherst College in 1894, from the Columbia University School of Law in 1898, was admitted to the New York Bar in 1898, and was dean of the Columbia University School of Law from 1910 to 1924 when he was appointed attorney general of the United States. He was appointed justice of the Supreme Court in 1925. This address was delivered at the induction of Huger W. Jervey as dean of the Columbia Law School, at Columbia University.

WE are gathered here, drawn by the ties of a common association, to bring our greetings and our good wishes to a new leader of an old and honored institution. The occasion is one which stirs the recollection and our sentiment of attachment for the past, but even more, it kindles our hopes and our enthusiasm for the future. We recall the service rendered to this institution and to our profession by its distinguished leaders of the past; by Kent, by Dwight and by Keener, and all of those who have participated in its educational work from generation to generation. We recall the service which this institution has rendered to our profession and to the public in the one hundred and thirty years which have elapsed since law was first made the subject of study and exposition within its walls. We recall the changes which have taken place in these years, not only in the methods of law study and in the art of its exposition, but in the law itself. We bring to mind the development which has taken place in this school in the interest of sound scholarship in law. We recall with satisfaction its growth in power, in influence, in resources and in its capacity to serve. These are the elements, intangible and imponderable though they be, which nevertheless give to our school of law its charac-



ter and give to it the institutional personality which has laid firm hold on our loyalty and our attachment. They constitute the ground work on which we must build to make the Columbia Law School that is to be, whose future we now commit to new leadership.

As we survey its past there are certain outstanding characteristics in its development and in its tradition which it will be well for us to recall, for only as we take the full measure of the past shall we be able to take full advantage of all that the future holds in store. The study and teaching of law at this University has passed through three phases in its history; each distinct in its character; each clearly defined and each clearly set apart from the others in point of time and of personal leadership.

When James Kent began his law lectures here in 1794 and later renewed them in 1823 there had been no effort in America, worthy of note, at the systematic exposition of the principles of Anglo-American law. The English common law had been developed as the principles of an art are developed, in the process of their practical application. The sources of our knowledge of its principles were in the reports of judicial decisions dating back to 1290 and in the tradition of its practice and its more or less fragmentary and pedantic exposition in the texts and treatises of the occasional writers on the English Common Law. Four times in its history there had been essays at a comprehensive statement of its more essential principles, each marking distinct periods in its progress. Bracton, Littleton, Coke and Blackstone are outstanding figures in the history of the common law, not only because they stood almost alone in their institutional treatment of the law, but because their treatises mark the great epochs in its development from simpler to more complex forms and in its expansion to adapt itself to the needs of an expanding civilization. It remained for Kent to add the fifth and last of the great institutional treatises on the common law and to identify it with instruction in law at an American institution of learning. His aim was not the strictly professional training which has become characteristic of modern law schools. His hearers were not all lawyers\* or even law students. He gravely assures us that his lectures were



attended "by seven students and thirty-six gentlemen." His approach was not narrowly technical. His purpose was the enlightenment and liberalization of his profession, but it also embraced the cultivation of the knowledge of laymen of our legal institutions as a worthy part of liberal training. With powers of scholarship surpassing those of any of his predecessors in this field; with a lofty elevation of thought and a rare felicity of expression, he carried on in this University the noble task of scholarship and exposition of legal science, which ripened into the production of one of the great classics of legal literature.

The time had not yet come for the development of legal training as a preparation for professional practice. The requirement for that type of training could be fully met by apprenticeships in law offices and with the fruition of Kent's undertaking in his "Commentaries on American Law," the University study of law in America gave pause until the development of its next phase in the organization of strictly professional law schools devoted to the training of students for admission to the Bar and for the practice of their profession.

This phase of American legal training found its most notable exponent and representative in Theodore Dwight, who for a generation as professor and Dean of our School of Law gave to legal education its utilitarian trend more than any other person of his time. The then dominating conception of law was that of a congeries of legal rules and principles to be mastered by the study both of texts and cases and by classroom discussions and applied as controlling rules to cases as they arose. Historical, as well as social and economic considerations, while not wholly disregarded, were, nevertheless, subordinated to the process of developing formal statements of existing legal rules and doctrines and their classification and arrangement in such manner as to make them most available in practical use.

To the work of the law teacher, Theodore Dwight brought a unique capacity for reducing to orderly and systematic form a subject matter which almost defied systematization, unrivaled power as a teacher and a gentleness and kindness of disposition which made him the idol of a whole generation of law students and lawyers at our Bar.



But the birth of the scientific spirit in research and in educational method produced its inevitable reaction upon law and law study. The spirit which in the latter part of the nineteenth century began to urge all mankind to trace human knowledge to its sources, to subject accepted doctrine to reëxamination and analysis, has brought to the lawyer and the law teacher a new and larger conception of the functions of legal education. It is a conception which embraces not merely an acquaintance with settled legal rules and doctrines for the use of the practitioner but which aspires to bring to mankind a more profound knowledge of legal principles and their more perfect adjustment to the social and economic organization of society.

The first step toward the realization of that conception has necessarily been a more penetrating and a more precise examination of the vast store of legal precedents which the common law had accumulated in the course of some seven centuries of its growth and development. Hand in hand with this process of analysis has come, as a necessary adjunct to it, a more exacting training of the intellectual powers of the student to deal with legal material and consequently an enlarged capacity on the part of the law school graduate to do the work of the lawyer and the judge.

Columbia Law School entered on this phase of its history when William A. Keener became Dean of the School in 1890. For his vigorous exposition of this newer conception of legal education, for his rare gifts as a teacher and his firm faith in the soundness of the system which he established here, Columbia owes to him and to his memory a debt which can never be repaid. He laid the foundations of the school as we know it to-day. He gave to his students and his associates in the faculty an inspiration and faith which have enabled those who followed him to build on that foundation.

The work which has been carried on here in the intervening years has been the preliminary work which it was needful should be carried on for at least a generation before its full fruits could be gathered. During these years we have been engaged, as at other American law schools, in the examination and analysis of the law as a mass of technical legal doctrine



embodied in precedent. The process has been in the first instance, as was inevitable, an appraising of technique, a defining and systematizing of our formal knowledge of law, a clearing away of non-essentials, the defining and accounting for the anomalous, a noting of the technical processes by which the law has been built up. But complete analysis of legal doctrine brings one always to its causal elements, to historical origins, to its underlying philosophy and to an examination of the necessary relationship which must exist between law as a social instrument and society itself. The very processes through which we have been passing in the development of our educational work here, as elsewhere, has prepared the way and brought us close to the next phase in the development of legal education in which it is the great privilege of our new dean and his associates on the Faculty of Law to take an active and guiding hand.

These years of pioneer work have not only prepared us for a more penetrating inquiry into the relationship of law to the social functions which law controls, but have brought to us a full realization that logic and history are not the keys which alone will set free the vital spirit of the law. Satisfaction of our innate sense of justice and utility are its ultimate goals. Neither can be fully gained without resort to a complete, accurate and sympathetic survey of the social and economic facts to which rules of law must apply. Nor can we begin the race for the goal without founding all law study on the firm basis of a well organized knowledge of social institutions and their functioning.

This University has long recognized the importance of study of the social and political sciences to an adequate understanding of our law and it has given to her students of law both freedom and encouragement to pursue those studies. But we have now come to a point in the development of legal science and in our study of it, where the acquaintance with the economics of the modern world and with social institutions requisite to present day law study, is not being provided by most American colleges and cannot be obtained in courses in political science which parallel the courses in the law school. Whether this requisite educational experience is to come from an improved



and more skillfully devised study in these fields in American colleges or whether the law school is to take the initiative in bringing into closer relationship with its work as now defined, graduate studies in economics and social science, is one of the interesting problems which invites attention and suggests new and engaging possibilities in the arrangement and organization of law school studies. Whatever the solution may be or whether there can be any completely satisfactory solution without an impracticable reorganization of our American system of college education, I am confident that we shall find in the work of American law schools an increasing emphasis on the social and economic foundations of all legal rules and an increasing tendency to weigh and measure legal doctrine and guide its growth on the basis of a more complete understanding of the social and economic significance of the particular facts to which it is to be applied.

Nor can future studies of legal science be limited as exclusively as hitherto to substantive legal rules and rules of procedure. In the field of legislation, of administrative law, in the processes of law enforcement, there are involved problems which go to the root of the effective administration of our legal system. Perfection in our law does not necessarily mean its successful administration. The wisest law is not self-executing and our institutions for legal training will not have fulfilled their mission until they have blazed a trail into the thickets and across the quagmires which lie between the law of the law books and the field of its actual operation in the control of human action.

There is a growing and insistent complaint that our system of law enforcement is breaking down and that there is an increasing lack of respect for law. The vigor and fidelity of public officials and the temper and psychology of the people are elements of first importance in all problems of law enforcement. But upon them the whole responsibility for its success does not rest.

We make a prodigious number of laws. In enacting them we disregard the principles of draftsmanship and leave in uncertainty their true meaning and effect. More and more we take over into the field of positive law that sphere of human



action which has been hitherto untrammelled by legal restrictions, without thought of the extent to which a wise policy may leave some phases of human activity to the control of moral sanctions or to the restraints of the community sense of what is right conduct. We disregard the principle that there is a point beyond which the restraints of positive law cannot be carried without placing too great a strain on the machinery and the agencies of law enforcement. We leave out of account the true relationship of the law to be enforced to the agencies for enforcing it! We build up our administrative machinery with ever increasing powers and authority in administrative officers at the expense of individual liberty and freedom of the citizen.

To preserve in our system the principles of individual liberty and to accommodate to them the requirements of an efficient administrative system, to ascertain the principles which govern the relationship of positive law to the machinery and processes of law enforcement are problems which cannot be solved wholly in the field of politics and of government. To their solution, schools of law and of political science have contributions to make. There must be brought to bear upon them the same thoroughgoing research, the same analysis carried forward in the spirit of science and of scholarship as have hitherto been devoted to the study of the problems of the common law. These fields of study and investigation, these opportunities for high public service insistently call for the employment of that unique capacity for research and analysis which has been developed by the methods of study and instruction in the modern American law school. They urge upon us the improvement of the unrivaled opportunity of this and other schools to increase and disseminate knowledge in our profession and with the public at large of the sound principles which must govern and make effective law administration as well as the principles of the law itself.

But with all our high hopes for the future, and with all our confidence in what the future may bring, inspired as they are by the personality of the character of the new leadership which we welcome to-night, let us not forget the lessons of the past.

Law is neither formal logic nor the embodiment of inexorable



scientific laws. It is a human institution, created by human agents to serve human ends. The attainment of its ultimate end and its successful administration, whether in the field of constitutional law or of private law, must depend in large measure upon the sympathetic popular understanding of its essential aims and of the more fundamental notions which underlie it. Is it too much to expect that with so much of achievement to our credit, we may include in our aspirations the hope that in the University and the law school something more may be done to humanize law and lawyers, something accomplished to clothe the bare skeleton of legalism with the grace and dignity and beauty which are rightly attributes of the most sacred aspiration of mankind, the aspiration for the realization of justice on earth? May we not hark back one hundred and thirty years to the fine liberalism and the humanistic spirit of Kent which led him in his first lecture in Columbia to say:

If he, to whom is intrusted in this seat of learning the cultivation of our laws, can have any effect in elevating the attention of some of our youth from the narrow and selfish objects of the profession, to the nobler study of the principles of our governments and the policy of our laws; if he can, in any degree, illustrate their reason, their wisdom and their propitious influence on the freedom, order and happiness of society and thereby produce a more general interest in their support, he will deem it a happy consolation for his labors.

Let us remember, too, that the aim of all law is utilitarian and only by an enlightened and progressive utilitarianism can our school reach its highest usefulness. Let us hitch our wagon to a star, but let us remember that it will function as a wagon only by permitting its wheels to roll on the solid structure of mother earth. This does not minimize science. It does not disparage scholarship or research. On the contrary, whatever increases knowledge of the law, whatever enlarges our understanding of it, whatever adds to our power and facility in the use of it, renders law itself more useful to society and enlarges our service to mankind.

But the only way in which our message may be carried to our profession, and through it to the public in any effective way is



through the graduates of our school, soundly and thoroughly trained in the principles of English Common Law and Equity, skilled in the analysis and judgment of legal problems, who speak a language which bench and bar can understand and who possess a sympathetic understanding of both the best traditions and the finer aspirations of our professions. We shall continue to send forth such graduates only through the continued presence here of gifted teachers of law and through a consistent policy of emphasizing in this school the importance of a skilled and enlightened exposition of legal principles to the end that we not only serve our profession by the steady improvement of its personnel but that whatever contributions we may make to legal science may be sympathetically and competently interpreted to our profession and to the public.

Let us hold fast, then, to the belief of Dwight and Keener that no law school can reach its highest usefulness which does not make its first objective the adequate training of competent lawyers. Let us hold steadfastly to their aim to make the teaching of law at Columbia preëminent in its skill and in its devotion but let us nevertheless enlarge our views of the utility in the highest sense of scholarship and the scientific spirit in the field of legal education.

It is an enlightened utilitarianism which must lead us as a school to keep in close touch with the Bar and with our alumni. The action and reaction which go on between school and university and alumni, especially when the alumni are members of a great profession, are not to be valued lightly. For what the Bar can bring to the school in understanding of the problems of law and lawyers in the workaday life of the office and court room; for what the school can bring to the Bar in legal scholarship and in idealism, in raising its standards, in making it a better and more worthy profession, in giving to it renewed faith in the strength and value of our profession, let not the school and the profession grow asunder.

I cannot close these remarks without a personal word. For Huger W. Jervay, our new dean, I feel that peculiar warmth of affection which the teacher must always hold for his student who has the rare distinction of being both sound and brilliant. It is no accident that he was the unanimous choice of trustees



and faculty to fill the position to which in a real sense he has been called. He possesses that golden treasure which enriches and enlightens and ennobles all that it touches, a profound knowledge of Greek language and of Greek culture. He has the capacity for scholarship and a love for it. He possesses the gifts of the teacher. He has a gifted voice and a gifted pen. He will seek truth rather than novelty, but he possesses that openness of mind which does not reject the truth because it is novel. With all these he brings to the service of Columbia a ripe experience in the practice of his profession and a just and comprehending estimate of the relationship of our profession to the enterprise of legal learning in a university.

We welcome him here. We wish for him the joy and accomplishment of successful leadership. We confidently predict it. And under his guidance, with the loyal support of the faculty, we look forward to a school of wider influence and steadily growing capacity for service to our profession and our country.



# EDWARD DOUGLAS WHITE

## THE SUPREME COURT

This speech was delivered in response to the toast to the Supreme Court proposed by Hampton L. Carson at the annual dinner of the American Bar Association on October 22, 1914. Chief Justice White was born in the Parish of Lafourche, Louisiana, in 1845 and died 1921. He became an associate justice of the Supreme Court of the United States in 1894, and Chief Justice in 1910.

To respond to a toast has always seemed to me submitting one's self to a toast because of the discomfort by anticipation, the misery in performance and the dissatisfaction on account of the things unsaid since only afterwards thought of. In addition, I have refrained since becoming Chief Justice from accepting invitations to make after-dinner speeches because of a tradition that that official was never to be expected to reply to an after-dinner toast. The warmth of the request of the committee in this instance compelled me to consider the reason of the tradition, and I have become convinced that it is not far to seek, since, putting aside the impossible suggestion that there was danger in the Chief Justice agreeing to make a speech after dinner, it is apparent that the rule rests alone upon the assumption that if he said something, he might do that which he was not expected to do, and if he said nothing, he might fail to do that which ought to have been done.

But be this as it may, after overcoming the personal disinclination because of a feeling that to accept the invitation would afford an opportunity to avail of that so infrequently relied upon constitutional provision, the equal protection of the laws, by turning the tables on my brethren of the profession and compelling them to be listeners, no difficulty was experienced in departing in this instance from the tradition, since in no possible view could it have application to the Chief Jus-



tice speaking in his own household and to members of his own family. And where, I submit, could he be more at home than at the hospitable board of the American Bar Association, surrounded by its members, his professional brethren?

The toast is "The Supreme Court of the United States," but the eloquent words which have just been spoken by my brother Carson demonstrate that the thought underlying its proposal is not the general jurisdiction of the great tribunal which the toast names, but rather the power conferred upon that court to interpret and uphold the Constitution and to declare all acts which transcend its limitations to be void, thus sustaining the lawful authority of the nation, protecting the legitimate powers of the states and securing to all the people the enjoyment of their constitutional safeguards. But these dominant considerations concern not only the Supreme Court of the United States, but every court, national or state, since such power rests in every court in the land because it inheres in all judicial authority under our system of government. Availing myself, then, of the judicial duty of coming to consider that which is essential, I paraphrase the toast as one to the courts of the United States, both state and federal, whether of high or low degree, whether of extended or limited jurisdiction, all to be considered in the light of the authority which they possess and the duty which rests upon them of applying and enforcing the Constitution as the supreme law of the land against all infractions from whatever source proceeding.

Thus fixing the subject for consideration, the first thought that comes to my mind is, in view of the vastness of this power, how completely its creation or recognition and the provisions for the mode of its exercise expressed the faith of the fathers in free government and the power of a free people to perpetuate the same. I say this because the very conception of the power in and of itself was a supreme manifestation of the profound faith which was in them and because the mode provided for the exertion of the power from its simplicity accentuated and made more self-evident the abiding faith by which they were controlled. Thus, while as to practically every other power created, checks and balances of various kinds were resorted to to limit the mode of the exercise of the power or to give sanction



to it when exerted, as to the power to interpret and enforce the Constitution, conferred upon, or recognized as existing in, judicial authority, no checks were interposed and no sanction whatever was ordained concerning its exertion, the power great as it was, therefore, in its ultimate conception being made to rest solely upon the approval of a free people.

My second thought, as I comprehensively contemplate the mode in which the judicial power has been exerted from the beginning by the courts both national and state, of all degrees of jurisdiction, is one of marvel at the devotion, the fidelity, the self-restraint and the love of country with which the power has been exerted; how rare the abuse, how infrequent the slightest semblance of ground for the belief that willful wrong was committed, that is, that there was an intentional transgression of authority. What a tribute this is to our profession—for judges and lawyers are one. Indeed, as I look at the subject and contemplate the varied methods by which judges have been selected, the frequent shortness of their tenure, the almost usual inadequacy of their compensation, the natural exultation and pride in our profession which comes to me is tempered by a sense of reverent restraint, since the thought cannot be resisted that a result so remarkable has been brought about by the dispensation of a Merciful Providence in vouchsafing the fulfillment of the promise, "As thy days, so shall thy strength be."

The third thought is, how marvelously the existence of these United States as they stand to-day a mighty people, with a national government adequate to fulfill its purposes, with state governments sufficient to preserve local autonomy, and with its millions of people all free and yet all restrained by those limitations which make men free, is due to the wisdom of the fathers in lodging the ultimate protection of the Constitution in judicial authority, and thus saving the confusion and conflict from which the destruction of our institutions would otherwise have arisen. I know not better how to make this truth obvious than by asking you to picture what would be our condition to-day if from the beginning we had been deprived of the balance-wheel which judicial interpretation has afforded to the maintenance and development of our institutions. I



know it may be suggested that this view is a mistaken one since it attributes to the exercise of judicial power beneficial results which were naturally brought about by the operation of economic and other forces; a view which, it is insisted, is demonstrated by the outbreak of the mighty conflict of the Civil War. I might well leave the contention to answer itself by the obvious disproportion between cause and effect which it embodies, for who, may I ask, would venture to suggest that because a meteor fell across the sky therefore the great laws by which the harmony and movement of the universe are maintained had no existence and produced no effect? I pause, nevertheless, for a moment to point out the misconception of the suggestion. I take it it may not be at this day doubted that the underlying controversies which brought about the Civil War existed prior to the Constitution as the result of divergent institutions or conditions and conflicting opinions which were not adjusted or harmonized when that instrument was adopted and therefore were left open for subsequent adjustment, and which, by the operation of the laws of self-interest or of conflicting conceptions of duty or even as the consequence of human passion, it became impossible to settle; and which therefore were fanned into the flames which caused that great conflagration. But neither side to that mighty controversy struggled to destroy constitutional government as they understood, but both on the contrary sought to perpetuate and preserve it as it was given them to believe it should rightfully exist. Underlying the whole struggle, therefore, on both sides, when it is dispassionately looked at, was the purpose to protect and defend free and constitutional government as it was deemed our fathers gave it. And this affords a ready explanation of how when the smoke of battle had passed away and the storm had subsided, the supremacy of our constitutional system by natural operation resumed its sway, and peace and brotherhood reigned where warfare and enmity had hitherto prevailed.

Let me illustrate. Do you recall the toymaker and his blind daughter, created by the genius of Dickens and so admirably interpreted by that great artist, Joseph Jefferson, in "Cricket on the Hearth," where with a tenderness which may not be described, mistaken though it may have been, in order to con-



ceal the poverty and misery of his surroundings, the father pictured to the blind one whom he so much loved his environment as one of prosperity and affluence? Let us listen to her as she places her hand upon his threadbare gray coat, which she deemed from his description to be of some rich fabric, and hear her question, "What color is it, father?" "What color, my child? Oh, blue—yes—yes, invisible blue." And now with the mists of the conflict of the Civil War cleared from my vision, as my eyes fall with tender reverence upon that thin gray line, lo, the invisible has become the visible and the Blue and the Gray, thank God, are one. See it again illustrated in that flag which stands behind me. I can recollect the day when to me it was but the emblem of darkness, of misery, of suffering, of despair and despotism. But ah! in the clarified vision in which it is now given to me to see it, as I look upon its azure field it is glorious not only with the north star's steady light, but is resplendent with the luster of the southern cross; and as I contemplate its stripes, they serve to mark the broad way for the advance of a mighty people blessed with that plenitude of liberty tempered with justice and self-restraint essential to the protection of the rights of all. And thus again I see, although the Stars and Bars have faded away forever, the fundamental aspirations which they symbolized find their imperishable existence in the Stars and Stripes.

Great as is the pride which the considerations just stated afford us as members of our profession, it surely will be the pride which goeth before a fall if our free government should suffer detriment because of our failure to remember and earnestly devote ourselves to the duty which rests upon us concerning it. It is indeed a great duty when the consequences which may result from a failure to perform it are considered, consequences which will be fruitful in misery not only for our own countrymen but to mankind generally; for who can foretell the obscuring of the light of liberty throughout the world which would necessarily result from a failure of our constitutional system? Mark you, I am not speaking pessimistically and am not intimating, because now and again some doctrines are boldly asserted and seem to meet with approval which by their mere statement are so destructive of representative



government as to give rise to a sense of despair or at least to cause the foreboding that they foreshadow the possibility of complete extinction of our government by the disregard of the essential truths upon which it must rest, that I am of the opinion that such a result will be accomplished. I say this because the things I refer to, all of them, I think, are but local and ephemeral and they serve to demonstrate one of the wonderful advantages of our system of local government, since it affords a means for confining and localizing the maladies which disappear long before there is the slightest danger of their becoming operative and effective within the great body of the people. Indeed, I cannot conceive the thought that whatever betide and however general might become a popular aberration, the consequence would be that the light of constitutional liberty would go out forever, since there is given me the faith to believe that however complete might be a conflagration which destroyed the noble edifice of our Constitution, as long as the traditions of the American lawyer survived they would suffice to afford the energy and insight from the exertion of which a new and enduring edifice of liberty and representative government would arise. But think of the sorrow and the suffering to be endured while such process of rehabilitation was being carried out.

But the question naturally comes, what are the dangers which threaten us and how is the duty to be performed of guarding against them?

In the first place, there is great danger, it seems to me, to arise from the constant habit which prevails where anything is opposed or objected to, of resorting without rhyme or reason to the Constitution as a means of preventing its accomplishment, thus creating the general impression that the Constitution is but a barrier to progress instead of being the broad highway through which alone true progress may be enjoyed. Upon whom does the duty more clearly rest to modify and correct this evil than upon the members of our profession?

In the second place, it seems to me one of the greatest evils which threaten us is, as it were, a forgetfulness of our system, a growing tendency to suppose that every wrong which exists despite the system and which would be many times worse if



the system did not exist is attributable to it and therefore that the Constitution should be disregarded or overthrown. This rests alone upon a forgetfulness of the considerations which underlie the Constitution and of the immortal truths which they embody. Why, I recollect but a few years ago meeting a distinguished public man who had just been delivering in one of our great universities a series of lectures on our constitutional system of government. He said to me: "I was surprised to have one of my listeners, a student far advanced in his university life, say, 'It gave me so much pleasure to hear your lectures for they were the first kindly words I have heard about our government since the commencement of my university career.'" I recollect myself a few years ago being in the atmosphere of a university and feeling that there existed among the student body either a profound apathy or a great misapprehension as to our government, the division of powers which it created and the limitations which it embraced; and in mentioning this impression to one quite familiar with the environment I was surprised to hear him say: "Oh yes, you are quite right, that is the impression which here prevails. Indeed I think it comes from the state of mind of the teaching body." Doubtless in a large measure this state of mind has imperceptibly and gradually grown from the evil habit which I just a while ago referred to of invoking the Constitution in such a way as to create the profound impression that its restraints were but limitations on true development and were therefore the means of preventing the onward and upward march of our race. Who can better gradually rectify this condition of mind than the members of our profession if only they determine with increased devotion to give themselves up to the correction of errors and wrongs which may exist despite the principles involved in our constitutional government and thus convince that true progress lies in fructifying and making them operative and not by destroying them?

In the third place, it seems to me that there is a tendency, not so great now as it was a few years ago, as admirably illustrated by efficient work in some respects done by the American Bar Association, to be lukewarm concerning attacks upon fundamental and essential constitutional provisions, to take it for



granted that they may not be overthrown, when on the contrary the plain duty is to be alert, to be insistent, to be devoted, at all times and on all occasions to defend against the least encroachment, to point out the dangers which must come and thus to keep ever vividly present and quickened in the minds of all the people the necessity of adhering to and upholding the Constitution if they would preserve the heritage of liberty which they have received.

At the outset, seeking to express the true resonance of the toast to which I was called upon to respond, I ventured to modify its form of statement so as to make it all-embracing and thus virtually cause it to be but the expression naturally to be expected from this body of lawyers. Now as I come to a conclusion may I be permitted to strike a chord for the purpose of evoking the noble harmony which underlies the toast as I at the outset interpreted it, by proposing one to the health of the American lawyer, which includes the American judge, as Bench and Bar are one; not alone of the judges of courts of extended jurisdiction and of last resort, but of all, however limited their jurisdiction; not alone of lawyers engaged in great affairs, but of all, however narrow may be the sphere in which they move. And in thus reëxpressing the toast or rather echoing it as expressed, may I not be permitted to indulge in the heartfelt aspiration that there may be given to them all a deep and reverent purpose of faithfully discharging the duties which rest upon them, to the end that our free institutions may be preserved and may be transmitted unimpaired to those who are to come.









GEORGE W. WICKERSHAM



# GEORGE WOODWARD WICKERSHAM

## THE AMERICAN LAW INSTITUTE

George Woodward Wickersham was born in Pittsburgh, Pennsylvania, in 1858, was educated in Lehigh and Pennsylvania Universities and began the practice of law in 1880. He was Attorney General in the Cabinet of President Taft. Mr. Wickersham has been a leader in many civic movements and is widely recognized for his public as well as his professional services. The following address was his presidential address before the American Law Institute in Washington, D. C., on April 29, 1926.

GENTLEMEN OF THE AMERICAN LAW INSTITUTE: It was with deep personal regret that because of duties overseas I found it impossible to be present at our last annual meeting. Upon reading the report of the proceedings of that meeting, and particularly the eloquent address of our honored Vice President, Judge Cardozo, delivered on that occasion, I realized that the loss was wholly mine and that you had been greatly the gainer by the substitution of the Vice President as your presiding officer. If it be true, as Jeremy Bentham said, that Sir William Blackstone first taught jurisprudence to speak the language of the scholar and the gentleman, it is equally so that Judge Cardozo has given it expression in the language of the poet, and has infused into the law the beauty of philosophy.

We are met to-day, the fourth time in this capital city, to take counsel together concerning our efforts to further and improve the great cause of justice. I always have thought the most adequate summary of the aim and object of government is that of the Preamble to the Constitution of the United States:

to form a more perfect union, establish justice, ensure domestic tranquillity, provide for the common defense, promote the general welfare and secure the blessings of liberty to ourselves and our posterity.



The practical problems of the moment of the adoption of the Constitution, put the necessity of a more perfect Union of the states and their peoples first in the thoughts of the framers, but hard on the heels of that impelling need came the predominant thought of establishing justice, to the end that the blessings of liberty might be secured for themselves and their posterity. To-day, your current thought is filled with insistent demands for justice; more certainty in our law; better adaptation of the law to the present needs of society; less delay in the administration of the law. A recognition of such needs three years ago led to the formation of this institute.

The Committee on the Establishment of a Permanent Organization for the Improvement of the Law, in its report to the meeting held in Washington on February 23, 1923, when this organization was formed, frankly admitted the existing popular dissatisfaction with the administration of justice, stating that "the opinion that the law is unnecessarily uncertain and complex, that many of its rules do not work well in practice, and that its administration often results, not in justice, but in injustice, is general among all classes and among persons of widely divergent political and social opinions."

The impelling force which made the Washington meeting and the organization of this institute possible, Director Lewis truly has said, in his foreword to the first volume of our proceedings, "has been the growing feeling among the members of the legal profession that the profession owes a duty to the public to improve the administration of justice." Since we embarked in the definite work undertaken by this institute, many efforts have been prosecuted in other directions, all tending to remove the reproach to the profession involved in the general recognition of the unsatisfactory character of our law and its administration.

The work of this institute was planned with careful regard to the limitations of the problem we should undertake, and we have studiously refrained, except in one instance to be referred to later, from being drawn outside of our chosen sphere of activity. There are many other things which must be done before the state of our law and its enforcement becomes what



it should be. Much is being done by other agencies than ours. The Federal judicial forces have been mobilized and the administration of Federal justice made more efficient through the operations of the Judicial Council presided over by the Chief Justice of the United States, under legislation largely promoted by him. In a number of states, Judicial Councils have been formed pursuant to law, following the suggestion which our honored Vice President, Judge Cardozo, made a few years ago in his now famous address, "A Ministry of Justice"; Councils charged by law with the duty of systematic study and criticism of the functioning of the judiciary of the respective states, and the recommendation of improvements which may be effected by legislation or rules of court. The better expression of statutory law by means of official legislative drafting bureaus is evident in the improved clarity of some of our modern state legislation. Little progress unfortunately seems to have been made in the direction of improving the educational qualifications required for admission to the Bar, and the observations in the report of the Committee on the Establishment of a Permanent Organization for the Improvement of the Law above referred to that—"Not a little of the existing uncertainty in the law is the price we are paying for low requirements of legal education preparatory to admission to the Bar and for judges often elected for short terms and chosen for reasons unrelated to their legal capacity"—passes unheeded.

It has been often stated with accuracy that in no other country than ours are men licensed to practice law with such meager educational requirements. Until this fact is frankly recognized by our legislatures and courts, the popular demand for better and more certain justice will largely continue to be unrealized.

In our own chosen field, the year past has been one of great activity, as you will readily perceive when you come to consider the volume of material which has been sent out for your consideration in advance of this meeting and which you will be invited to discuss. If, as Judge Cardozo said at the last annual meeting, there had then been "at least a brave beginning," of our undertaking this year it may truthfully be said there has been a notable advance. The Director will give you the



details of the number of meetings of the reporters with their critics and of the extent and nature of the work done. When the Council assembled on December 16th last for a three-day session, it found itself confronted with an undertaking of no small magnitude, and of no easy dispatch, in the consideration of the fruits of the labors of the scholars who for a twelve-month previously had been toiling in the field assigned to them by the Council's directions. During those three days, however, the members of the Council discussed with such fullness as time would permit, the reports in the fields of Contracts, Torts, Agency and Conflict of Laws, respectively, and finally, in order that the work of the reporters and their advisers might not unduly suffer from criticism of the moment, the Council referred each one of the reports under consideration back to the reporter for discussion with a subcommittee of three members of the Council, with instructions to report to the executive committee, which was authorized to transmit the tentative drafts to the members of the institute for consideration at this annual meeting, with a view to suggestion and criticism. Accordingly, a Committee on Torts was named, composed of the Honorable George W. Wheeler, as Chairman, and Messrs. Owen J. Roberts and James P. Hall, as members; a Committee on Agency, of which Major Edgar B. Tolman was Chairman, and Messrs. William Browne Hale and Henry M. Bates members; a Committee on Conflict of Laws, of which the Honorable George W. Alter was Chairman and the Honorable Benjamin N. Cardozo and Honorable Arthur P. Rugg members, and a Committee on Contracts of which the Honorable Nathan Matthews was Chairman and the Honorable Learned Hand and James Byrne members. The reports which have been sent to the members of the Institute for their consideration and for discussion at this meeting have been transmitted through the executive committee after conferences between the reporters and some of their advisers and these respective subcommittees. The material which is submitted to you therefore represents the combined efforts and the matured comment of a number of minds, and it is to be hoped that in their criticism members of the institute will have in mind the fact that every sentence, indeed every word in these various drafts is the result of care-



ful, critical and analytical thought and deliberate studied expression.

In connection with the consideration of the various draft restatements, the Council gave very careful thought to the question whether or not the restatements should be accompanied by "treatises," in the accepted sense of that term, or by such brief commentaries as might appear to be necessary for the elucidation of the text of the restatements. Bearing in mind that the great objective of the work is the clarification and simplification of the law, it would seem most undesirable that the restatement should be merely in the nature of a syllabus, to be accompanied by bulky treatises, or text-books. On the other hand, we should recall the admonition given in the report of the Committee on the Establishment of a Permanent Organization for the Improvement of the Law, to which I have already referred, that the statement of principles to be put forth should be much more complete than that found in European continental codes. The American courts, that report pointed out, "though always in the position of being able to change and modify the common law, practically, because of the detail in which the law is set forth in prior decisions and its respect for such precedent, has usually a far narrower field" than the European courts "for the exercise of discretion." The authors of the report expressed the belief that "any restatement of our law to be of practical use should follow this characteristic of our law, and, therefore, the principles of law should be set forth with a fullness made possible by the care with which rules pertaining to the application of more general principles have been considered in the decisions of our courts." If this counsel as to the nature of the restatement be followed—as I believe it has been followed in the drafts before us, it would seem that to accompany the restatements with bulky text-books, would to a large extent impair, if not wholly undo, one object of the restatement, namely, the reduction of the bulk of literature necessary to be consulted by the practicing lawyer. Without, however, determining this question as an ultimate matter, the Council did decide that in submitting the tentative drafts of restatements to the members of the institute and the annual meetings, there should be transmitted with the restatements, or



as nearly thereafter as practical, such commentaries as may facilitate the consideration of the restatements, and that where there is a conflict in the decisions under a section of the restatement, there shall be furnished with it an explanation showing where the actual difference exists in the authorities, and giving the reasons for the adoption of the section as expressed in the restatements.

Among the most interesting results of the work of the institute up to the present time has been the increased interest in its progress on the part of the various state and local Bar associations. Of equal, or perhaps even greater importance, is the increasing interest manifested in our efforts by the Law Schools. Drafts of the restatements are being sent to the Law Schools for study by teachers and scholars. By these means we are securing the interest in our work on the part of the men to whom largely we must look for its future accomplishment. Coincidentally, some of our leading Law Schools are organizing for advanced study and research, and our institute may anticipate greater and more valuable coöperation with them through such better, more scientific organization. One scarcely can exaggerate the value of such assistance. It is the logical development of the preliminary studies and action by the associated Law Schools, out of which came the inspiration for our work.

Far sooner than the founders of the institute had anticipated, an active, widespread, critical interest in our work is being exhibited in all parts of the country, and from many sources are coming increasingly valuable suggestions which encourage and perhaps justify the hope that our accomplished work may meet with the uniform approval of the profession at large. At all events it is presently true that it has greatly stimulated interest in the study of the common law and in the effort to unify its expression in the different jurisdictions.

In one respect only has the institute ventured outside of the line of work to which it dedicated itself on its organization, and that is in undertaking the preparation of a model code of criminal procedure. Those of you who attended the last annual meeting will recall the report submitted to that meeting that the Laura Spelman Rockefeller Foundation had generously ap-



appropriated the sum of \$20,000 annually for three years to the institute to meet the expenses of the preparation of a code of laws and court rules relating to criminal procedure. You will recall the reports made to the Council by the Committee appointed to make a survey and statement of the defects of criminal justice, of which the Honorable Herbert S. Hadley was Chairman, and Messrs. William E. Mikell and John G. Milburn members. That report led to the appropriation just mentioned, and the action of the Council of the Institute regarding the matter reported to the institute at its last annual meeting. The Council on May 2d, 1925, authorized the executive committee to invite additional persons to act with them in preparing a plan of work for the preparation of the proposed model code, and action having been taken under this resolution, a further report was prepared by this committee, which is printed in the third volume of the Proceedings of the Institute, at pages 499-524, which was unanimously adopted by the members of the committee whose names are signed thereto. The resolutions recommended by that committee, printed on pages 523-524 were adopted, a Committee on Criminal Procedure duly constituted, and Messrs. William E. Mikell and Edwin R. Keedy were appointed reporter and associate reporter, respectively, for criminal procedure, for the remainder of the current year and for the year 1926. This work is now going forward, and the Council hopes it may result in a useful contribution towards the simplification of our criminal procedure, the necessity for which is widely recognized. We hardly could have escaped undertaking this work. Popular thought at the present time is more immediately concerned with the criminal law and its enforcement than with the civil law. The reports in the daily press of crimes of violence against the person and against property have inflamed the popular imagination to a point which has compelled action in many directions. More drastic penal laws are being enacted by legislatures; increases are being made in the number of judges of our Criminal Courts; some increases in police forces. "Surveys" or studies of the conditions responsible for this menace to the peace, quiet and safety of our communities are being made; Crime Commissions, national and local, have been formed. Our own contri-



bution to the effort to meet this great fundamental problem of conserving the peace and security of the people, may be slight, but it will be our endeavor to make it valuable to the extent of our undertaking. The maintenance of justice, the ensuring of domestic tranquillity and the blessings of liberty can be realized through the efforts of no one agency alone; they depend upon the mental and moral attitude of the people. We can perform our part, and make a great valuable contribution to the common welfare, but those "unalienable rights," among which are "life, liberty and the pursuit of happiness," to secure which our governments, national and state, were instituted, can be preserved only so long as our people continue to love liberty, to respect the rights of each other, and to realize that upon themselves, and not only upon their neighbors, rests the duty of that vigilant watchfulness of the public interest without which liberty must perish.



# JOHN SERGEANT WISE

## THE LEGAL PROFESSION

Speech of John S. Wise at an annual dinner of the New York State Bar Association. Matthew Hale, the president, introduced Mr. Wise as follows: "The next sentiment in order was, by mistake, omitted from the printed list of sentiments which is before you. The next sentiment is 'The Legal Profession,' and I call upon a gentleman to respond to that toast who, I venture to say, has practiced law in more States of this Union than any other gentleman present. I allude to the orator of the day, the Hon. John S. Wise [applause], formerly of Virginia, but now a member of the Bar Association of the State of New York."

MR. CHAIRMAN AND GENTLEMEN OF THE BAR:—It may not be true that I have practiced law in more States of this Union than any one present, but it is certainly true that I never did as much speaking in the same length of time, without charging a fee for it, as I have done within the last twenty-four hours. [Laughter.] At two o'clock this morning I was in attendance, in the city of New York, upon a ghost dance of the Confederate Veterans; at two o'clock this evening I resolved myself into a deep, careful and circumspect lawyer, and now I am with the boys, and propose to have a good time. [Laughter.] Now, you know, this scene strikes me as ridiculous—our getting here together and glorifying ourselves and nobody to pay for it. My opinion is, that the part of wisdom is to bottle this oratory and keep it on tap at \$5 a minute. [Laughter.] The Legal Profession—why, of course, we are the best fellows in the world. Who is here to deny it? It reminds me of an anecdote told by an old politician in Virginia, who said that one day, with his man, he was riding to Chesterfield court, and they got discussing the merits of a neighbor, Mr. Beasley, and he says, "Isaac, what do you think of Mr. Beasley?" "Well," he says,



"Marse Frank, I reckon he is a pretty good man." "Well, there is one thing about Mr. Beasley, he is always humbling himself." He says, "Marse Frank, you are right; I don't know how you is, but I always mistrusts a man that runs hisself down." [Laughter.] He says, "I don't know how you is, Marse Frank, but I tell you how it is with me: this nigger scarcely every says no harm against hisself." So I say it of the legal profession—this here nigger don't never scarcely say no harm against himself. [Great laughter.]

Of course we are the best profession in the world, but if any of our clients are standing at that door and listening to this oratory, I know what their reflection is. They are laughing in their sleeves and saying: "Watch him, watch him; did you ever hear lawyers talk as much for nothing? Watch them; it is the funniest scene I ever saw. There are a lot of lawyers with their hands in their own pockets." [Laughter.]

Mr. Chairman and gentlemen, another thing. We are not fooling with any judges now. I know who I am talking to and how long I have been doing it. Sometimes you can fool a judge into letting you have more time than the rule allows; but with lawyers, enough is enough. We know exactly when to put on the brakes with each other. We are not now earning fees by the yard or charging by the minute, and when a man is through with what he has to say, it is time to sit down, and all I have to say in conclusion is, that the more I watch the legal profession and observe it, the more I am convinced that with the great responsibility, with the great trusts confided to it, with the great issues committed to its keeping, with the great power it has to direct public feeling and public sentiment, with the great responsibilities resulting, take it as a mass—and there are plenty of rascals in it—but take it as a mass, and measure it up, and God never made a nobler body in these United States. [Applause.]



## C. K. WOODBRIDGE

### SALESMANSHIP AND ADVERTISING

This address was made before various business organizations in 1925 by Mr. C. K. Woodbridge who was then president of the Dictaphone Sales Corporation.

ADVERTISING and Selling in all lines needs re-firing. Directors, presidents, manufacturers, jobbers and retailers have been too greatly concerned with the problem of production, and not distribution or consumption. Now we are facing changed conditions. Goods must be sold. The masters of the market—advertising men and salesmen—have come again into their own. Their services are needed. Their counsel is sought.

It is easier to handle material than men. The factors are the same in one case, but in the other not so. Sales must be made every day under constantly varying conditions. For years we've been hitting the high spots. Now we are confronted with the need of constructive selling, of finding a market through strenuous and continuous advertising and sales effort.

Production without adequate distribution is without avail. Production of itself fills no pay envelope. Wage money comes from sales at a profit. Wholesalers and retailers have experienced an entire change in their clientele in the last few years. Customers have been drawn to them largely because they, at the time, had the kind of merchandise needed for the extension of the individual business, and now the wholesaler and retailer are put to the test to see if they can retain this clientele against the competitive field produced by a buyers' market.

There is a good rule of business that goes like this. Find out what the people want—what they can afford to pay for it—then manufacture a quality product to fit that want at the price. It is conceded that all may not want the same thing. Location,



custom, utility, earnings, ambitions, all these things enter into the wants of people. This fact produces a variety in quality, style and price of merchandise. Our products are highly diversified. This great diversification of business is perfectly natural for we meet constantly changing conditions internationally, nationally and locally, and the effect of these changes is felt right down the line. The conditions we now face in business are just what we must expect for the law of Supply and Demand goes on working all the time.

Advertising and Selling in developing future markets faces constant changes. In Birmingham, England, there is a great series of manufacturing plants, which during the War were engaged in the manufacture of guns. Now that gun demand is gone, plants, many of them greatly enlarged during the War, are for the most part idle. Shall we wait for a new war or find out what the public wants and what they can afford to buy and market something that has real present service value?

Too many industries are over-equipped and so long as this continues bargain sales and bankrupt sales continue. Never mind how much you can make. Find out what you can sell at a profit. Preparation for the future is essential now. Every business, big and small, needs what I call a Forward Looking Department. The crow's nest, if you please, of the business ship. You have a Planning Department in the factory. Why not a Planning Department in sales administration?

Many a fine idea is allowed to go into discard because it is no one man's particular job to follow that idea through to a conclusion. Each one of us is cluttered up with the daily details of his job. Who does the advance reading for your company? Who keeps abreast of the changing selling problems produced by changing market? Would you fire a man who was caught reading a book in the day time in an endeavor to get a broader vision of his job?

How many executives sit down in their office in the morning and read over some of the latest editorials in the trade journals, or search the columns of the daily press, or the *Journal of Commerce*, or some other business man's paper? Whom have we in our organization delegated to study the newest problems of



advertising and selling occasioned by federal trade decisions, the attitude of labor unions, the Webb-Pomerene bill, trade acceptances, and the like? Whom have we to make a digest of the best of this material and pass it along to the members of the organization so that everybody may be up-to-date on such subjects and have time to give them some thought in the routine of their business? What contact do you make with your public library?

Some of us will say that the advertising man has no business to devote any of his time to such work; that the sales manager should devote his time entirely to sales; that the credit man should devote his time altogether to the collection of money; and the executives to the pertinent matters of daily management. It would seem that such men who reason this way are holding the penny before their eyes and hiding from view the half dollar beyond. The business world is constantly changing. The business mind must be keen and alert. We must understand and appreciate changes if advertising and selling is to develop present and future markets.

In a business enterprise we deal with three major functions: Production—Finance—Distribution. These three comprise business administration. Each of these has its definite functions to perform. It is a triumvirate, if you please, with a common objective—sales at a profit.

Business enterprises vary in size from the one man enterprise, handling all the functions of business administration to the giant corporation with many men each handling only one function as a part of the whole. The policies of a business enterprise must be determined by business administration. An organization must be created to carry out the details. The enterprise must have an objective. Sales policies, like production and financial policies, should be decided by the administration as to their general character. Policies determine what the plan of action shall be. Then follows the operation of the plan. These two functions are as much a part of advertising and selling as they are of production and finance.

Let us look back. The medieval merchant who sold abroad went forth with his pack or his boat load to find his market. L. C. Marshall of Chicago University, in "Business Adminis-



tration" says: "With an intimate knowledge of his product (often his own manufacture) the early merchant performed the functions of transportation, police protection, insurance (risk against fire), storage, market analysis, advertising, selling, credits and collections." As the business enterprise developed, these functions and others found their natural place under production, finance and distribution.

The functions performed by the early merchant in the natural course of finding a market for his goods, indicated the scope of subjects necessary to the proper understanding of present and future markets. While these functions are to-day performed in most business enterprises by the specialists, it is obviously essential that they be coördinated under one head if sales administration is to properly operate for maximum sales results. It follows that there must be one supreme head for sales administration, be he Vice President, General Sales Manager or Sales Manager—the title matters little—his authority is of great importance.

In the consideration of sales administration, I pass without comment management by committee—boards, etc., as I hold no brief for their operation. Delegated authority to act is, I think, the most acceptable form of sales administration. Specialists in business enterprises are knit together by authority. Like a football team, the individuals of a business enterprise acquire knowledge of specialized tasks under direction of a coach. Each team plays the game under authority of its captain. We need to recognize that there is a time for planning and a time for operating. If both functions are performed by one man the time for planning is not between the hours 9 to 5, when active sales operation can be best performed. The great crime to-day is the paltry few hours devoted to selling each day by the man who sells in the presence of the man who buys.

Obviously to cover all the functions in sales administration necessary to the development of present and future markets is not possible at this time. Let us then just consider a few important factors.

Advertising is a recognized function in distribution. The cost of advertising is a much discussed theme. How much



shall it cost? Each advertiser must answer that question in his own way. A public discussion of costs will not help men and women to a fuller appreciation of advertising. A public discussion of how advertising is used in every form of endeavor from the amateur theatrical to products of daily use and the molding of public opinion will cause the public to appreciate its function because of the beneficial results. It's not the cost that needs emphasis. Make people appreciate what a factor good advertising is in our daily routine and there will be less and less talk about the cost.

The Right Hon. Winston Churchill at the International Advertising Convention held in London during July said:

"Advertising nourishes the consuming power of men. It creates wants for a better standard of living. It sets up before a man the goal of a better home, better clothing, better food for himself and his family. It spurs individual exertion and greater production.

"We in our modern world, if we are to supply the provender and products for the enormous population of the present day, must march always with the opinion and the needs of millions and millions of people. If we are to supply the needs of the modern world it can only be on the basis of mass coöperation, and mass coöperation can only be obtained by advertising. For mass coöperation means that a desire to secure better things must have been created in the minds of the masses of people. When this desire has been made effective demand by greater individual effort, mass production follows, reducing the price of commodities to the individual.

"The things a man wants for himself and his family should be pictured to him in honest, simple terms. He should be given the desire to produce more so that he can possess the things he now wants. The average man's consuming power is the measure of his power to purchase. Advertising which makes him want better things and points out to him that to have them he must do his share of the work of the world is thus a true world tonic for better times."

The biggest job to-day, in sales management, is the refiring of the individual salesman. We need a greater conscientiousness of the acts to be performed by a salesman to meet the



mental process the mind goes through while a sale is being made.

1. The introduction or approach  
Is there one common form?
2. The art of making an impression  
How is it accomplished?
3. How shall salesmen establish points of contact?
4. How do we arouse interest?
5. How do we hold attention? Do we know the importance of eye selling?
6. How do we meet objections?
7. Have we the art of leaving an "open door" behind us?

#### SALES MORALE

Someone has said that there are three great essentials in selling—Health, Habit and Industry. The salesman's mental attitude to the house, product and customer must be right if he is to successfully sell. Oftentimes you can detect in a man's voice a sarcastic note. When you notice this, that is the time to nip it. Do not allow a man to keep a grouch.

Require obedience to rules. Wishwashy decisions make dish rag salesmen. Decide and lead the salesmen to a decision. Salesmen need to be directed by someone. Salesmen need to feel that the house has a personal interest in its men and their families. Intelligent, sympathetic supervision is required. Encourage men to come and tell their troubles. Help a worthy man to a higher position if in your power. It is a big feather in a manager's cap to develop men rather than to hunt for new ones and it is not a sign of intelligence and ability to hire and fire men. Don't fire, refire.

Salesmen need to grow with the house. They must be made to realize that they are progressing. The tailender deserves unstinted support. We are prone to play winners. Those are the fellows we like to be with. It is the average salesman, however, that counts. Boost the average by helping the tailenders. The salesmen should be known not only as they appear in the office, but as they also appear on the field. Go out on



the firing line with your men. An occasional trip through the territory is of immense value. Show your men as they appear in action.

Most of us are strong advocates of the weekly sales bulletins, which should be composed by the sales manager or a competent person under his direction. This bulletin is of the utmost importance. It should be a sales bulletin and not a sales bull. Salesmen need the stimulus that comes from a well planned contest in sales. The spirit of rivalry is in all salesmen. Friendly rivalry is a great sales builder, and better yet it builds sales morale.

Sales conventions to some extent build sales morale. It is too frequently like a big circus and those in the "ring" do the playing. There seems to be a growing tendency for large companies to get away from the big convention idea and call small group meetings, a series of small conventions. It's simply getting down to a closer personal relation with all men.

Believe in your men but keep an eye on them. Keep close to your men by working with them; to change their viewpoints, you must understand their viewpoint.

The personnel of the Administrative Department determines to a great extent the kind of sales morale we could build. It is impossible to expect salesmen to secure constructive ideas for well built manhood if those who represent the house live an existence inconsistent with the rules of good living. Men of honor, men of integrity, men of open mind with clear vision and good judgment, will collectively make an organization to which salesmen can look for inspiration, for when a salesman has firm convictions about the standing of his house and his product, he will have the courage required to put the message across. Doing something for the other fellow: This is one of the forces that makes for salesmen's success. It is a successful business man's experience.

Let me illustrate. A salesman visited a store one day and while waiting to see the owner, he noticed that the girls at the telephone, located on a balcony, were constantly shouting down to different parts of the store, to find out what the price of this, that and the other thing was that morning. For example, they had to ask the price of eggs, butter, potatoes,



etc. During a talk with the merchant the salesman diplomatically mentioned what he had observed and asked the merchant if he had ever considered the advisability of placing a large black-board in front of the telephone operators, with the prices of staples marked plainly and kept strictly up to date. The merchant's reply was "You are the first salesman that has ever offered a suggestion of any value to me in my business." Thereafter that salesman in the mind of the merchant was not only thought of as a salesman, but as a man with individuality. Know what the other fellow thinks of you.

Sometime ago, realizing that many a selling plan or suggestion developed in the office was not always practical when presented to the merchant, we encouraged our men to get close to the buyer. The salesman, at the close of the day, during the busy hours of city trade, entered the retail store, donned an apron, and sold goods over the counter. He thus came into personal contact with the consuming public and learned what it thought of his product and gathered many good ideas as to its use. By collecting the ideas of the individual man, we soon had a great many ideas which, when applied to our business, put us in tune with the public. Know what the consumer thinks of your product.

No product is complete by itself. You have seen in the street cars of New York, Sunshine Biscuits advertised by a picture showing cheese and jelly; you have seen Ridgeway Teas advertised with a plate of biscuits; you may recall that Armour advertised hominy to promote the sale of butterine. You have seen great success in selling developed in retail stores through the combination of your own product with others. The Public Utility Companies sell oil, gas and electricity—yes—but stoves, lamps, heaters, electrical appliances and a variety of smaller merchandise helps sell their principle product. The General Electric Company has made a specialty product out of a common light socket plug by concentrating in advertising and selling on the convenience it is in the use of all kinds of electric appliances in the home.

We hit the high spots in our advertising and in our selling. We emphasize fancy shoes and forget the stockings; we spout away on the value of a thing that we carry and fail to re-



member that without some other products ours would be a dismal failure. It is only our fear that the other fellow will take something away from us that keeps us from combining forces in advertising and intensive sales work that would, without doubt, increase the sale of our individual product.

"Never mind if you are an artist," said an employer of mine, "if you have drawn a horse, write the word horse under it." Talking big profits in percentage and dollars sounds fine, but when a salesman in Florida held fifteen dollar bills before a grocer, and told him he would give them to him at the close of 30 days, if he sold \$100 in merchandise, it did the trick, where fine talk cleverly put failed, and where a repetition of 15 per cent on \$100 did not paint the right picture. The young man selling the adding machine proved that old Harrison could save \$12 a week and prevent the bookkeeper from making mistakes—but he didn't buy. He hit all the high spots and made no sale, because, said the district manager, he should have let old Harrison hold the stop watch, find the bookkeeper's error, and figure the saving. Get the buyer in the picture. Put a label on your story.

It is said that we know the least about the things that are nearest to us. We all have buttons on our coat sleeves, but none of us can tell right "off the bat" how many. We live in the Woolworth Building, but few of us know what can be seen from the tower. We boast in New York that we don't know our neighbors. Yes, there are acres of diamonds in your back yard—go dig for them. Then get together in your monthly meetings and help the other fellow.

We had a great common cause, that forced great bodies of men to concentrate on things industrial and which brought great groups of men together socially while prosecuting a great war. Out of all this has come a greater appreciation of our brother men. We are learning the best way to make men is to be men ourselves. Edward Everett Hale gave us three great rules for business living. First: Live in the open. Second: Touch elbows with the rank and file, and Third: Talk every day with somebody who knows more than yourself.



# OWEN D. YOUNG

## THE DAWES PLAN

Owen D. Young was born in Van Hornesville, New York, in 1874 and began the practice of law in 1896. He has been active in his profession and in business and was a member of the commission which established the Dawes Plan in Europe. The following speech was given at the testimonial dinner tendered him by the business men of New York at the Waldorf Astoria Hotel, December 11, 1924, in recognition of his services as a member of the Dawes Commission and as Ad Interim Agent General of Reparation Payments. Secretary of State Hughes spoke as follows over the telephone from Washington: "It is no disparagement to others to give signal and appropriate recognition to the eminent and constructive ability and tact, rather I should say the genius, of Owen D. Young, which made possible the formulation and adoption of the Dawes plan. That plan has stood the test of both economic and political analysis and the best tribute that could possibly be paid to Owen D. Young is written between the lines of the protocol concluded at the London conference."

MR. CHAIRMAN, LADIES AND GENTLEMEN:—From my own experience and from observation, I have learned that unless one is an historian or a philosopher and a master of discriminating speech, it is unwise to talk of things which have happened or are to happen. It was with this in mind that on my arrival in this country, I made a firm resolve, and by way of better moral security, a public announcement, that it was my intention to come home, take up my job and keep quiet. Here I stand a defaulter on my own resolve. Compelled as I am to choose between seeming to be ungrateful or speaking, I choose to speak. Wherever these words may go, however, this warning must go with them. I speak only my personal views as a private citizen. I hold no warrant to speak either directly or indirectly for the Government or for the citizens of the United States.





OWEN D. YOUNG







There must be no doubt in your minds of the gratitude I feel for this public expression of your appreciation and your confidence. I feel guilty, too, in stealing one more evening from your all too busy lives. What I should like most to say is, "I thank you from my heart—let us all go home." That would be taking myself too seriously. This celebration to which you have so seriously responded is your testimonial of gratitude that there promises to be some tranquillity in Europe and some healing of the wounds of war.

It is your expression of satisfaction and of pride that America, at last, after a period of hesitation and of doubt, has played her part in an effort of peace as she previously did in the effort of war.

Let me express my regret that General Dawes is unable to be present to-night. His absence, however, enables me to say something which his presence might have prevented. He has so generously given credit to his associates for the plan that the truth should now be told. I remember sometime during the first two weeks in Paris when the name "Experts Committee" was gradually giving way to the name of "Dawes Committee" and when things did not look very hopeful, the General said, "Well, let them call it the Dawes Committee; someone has to stand up and take the garbage or the garlands." Let me say that at the time when the name "Dawes" became attached to the Committee, it looked as if the bouquets would all be of the backdoor variety.

Every one of my industrial associates knows that his business is composed of two important departments and that the men who are successful in one are seldom qualified for the other. One is manufacturing, the other is sales. It is not enough to manufacture a product, even a good product. It must be sold. The installation speech of General Dawes which was published in full in the newspapers of all the principal countries of the world created at once a change in the public opinion of Europe. His directness, his clearness, his determination and his courage suddenly dispelled despair and doubt and gave hope and confidence to the masses of people of Europe and a feeling of pride to the people of America. From that time on, the Committee was no longer the "Experts Committee," it was the "Dawes



Committee." The man with the pipe who was unafraid.

Politicians of all countries knew well how to get away with an "experts" report. They looked with anxiety on the approaching Dawes report. The point I desire to make is that the Committee followed the best commercial and financial practice by having its goods sold before they were manufactured. In the language of the advertiser a "consumer demand" was built up for the Dawes Report before anybody knew what it was to be and before a line of it had been put on paper. General Dawes was the sales department of our concern. In that department he had no assistants or associates and he needed none. The other members of our Committee will testify that the greatest contribution of any individual member of the Committee was made by General Dawes.

The remaining members of the Committee, with General Dawes as leader, were all in the manufacturing department. We made our product conscientiously and with the best knowledge and skill at our disposal. Each national delegation had its aides, experts, and assistants, and from them came guiding information and helpful suggestions. On the Committee itself were men of great ability and highly specialized training. I associate myself unreservedly with what General Dawes has said of them. With a manufacturing department thus set up, it would have been a reflection indeed if we could not have made a relatively simple article which would meet the requirements of a well advertised market already prepared to receive it.

Now, Mr. Chairman, let me say a word about the character of the report itself. One listening to its enthusiastic advocates would think it an inspired document which, taking account of the great international, racial, financial, and social currents of the world, had solved completely, and perhaps forever, those great problems. One listening to its worst enemies would feel that the plan was a mere superficial veneer which was bound to crack and disintegrate with the burning passions and the freezing selfishness which it concealed. Let me say that in my view both of these estimates are wrong. The members of our Committee well knew that human minds are too small to comprehend such great forces and to make a plan which unchanged, would be permanently effective to control them. The Com-



mittee set about its work in a quite different spirit. It was in the spirit of the scientific research worker from whom we are all learning so much. Knowing that great forces exist, he does not try out of hand to build a machine which will harness them and then sit back and say that the machine is finished for all time. Not at all. He tries to find out the character of the forces and something about their nature, direction, and intensity. So our Committee sought to make a machine which would indicate, and in some degree measure the extent and direction of these international economic forces with which we had to deal, and we tried also to insulate the machine so far as possible from the cross currents of domestic politics in order that the measurements might be more correct. To be precise, we preferred not to speculate on what Germany could pay; we sought a machine which would demonstrate both her *ability* and her *will* to pay.

Whether Germany would pay could only be ascertained by discovery, first, of her willingness to pay, second, of her ability to produce, and third, of the capacity of the markets of the world and of the creditor nations in particular to absorb her goods. There was much debate and many doubts as to her willingness to pay. That was a political question which could only be answered by sixty millions of German people acting through their political agencies. There was a difference of opinion as to her ability to produce. That was and is a question which depends not so much on the size of her plants and her available capital supply as on the spirit and discipline of her labor. And as to the capacity of foreign markets to receive German goods, the economists of the world made such widely divergent forecasts that they conclusively proved the inadequacy of all reliable statistics on that question. Our Committee did not step in where winged students feared to tread.

The Dawes Committee did not approach the problem of reparations in the spirit of imposing a penalty on Germany. It did not attempt to fix the blame for the War. It was not permitted even to determine the total amount of Germany's obligation. It merely found the fact that the allied nations had become heavily burdened with debt and that their citizens were struggling under an unprecedented taxation to pay the cost of



this great catastrophe. Germany was asked by our plan to assume and pay, or at least to show her willingness to assume and pay annually her fair share. Germany was asked to submit her industries and her people to a burden of taxation for debt paying purposes reasonably commensurate with the taxation which her neighbors had to impose upon their industries and their people in order to pay their war debts. As General Dawes well said in his letter of transmittal, "More than this limit could not be expected and less than this would relieve Germany from the common hardship and give her an unfair advantage in the industrial competition of the future."

There was one specification of the plan which the Committee always had in mind. It was this specification which made it a practical success. When I am in the country, my chief occupation is to trade cows with my neighbors. Just before I left for Europe, having spent the whole of an arduous morning in a most difficult negotiation, I said to my neighbor as he seemed about to leave, "Abe, will you buy that cow?" His answer was, "Well, she's most too dear to take and she's most too cheap to leave." The plan had to be such that when put to the interested countries, each would feel that it was most too dear to take and most too cheap to leave.

And so the plan was issued on the 9th of April, the Committee having sat continuously from the 16th of January. A few hours after its issue, the Reparations Commissioners accepted the plan so far as it was within their power and recommended it to their respective Governments for action. Germany immediately responded favorably, and the creditor Governments in Europe, although delayed somewhat by elections bitterly fought both in France and Germany, moved forward to the Conference of London.

The plan itself dealt only with the economic problem of reparations. It did not deal with its military and political aspects. It recognized that the political and economic unity of Germany as established by the Treaty must be restored and that the occupation of the Ruhr must be made consistent with credit requirements. It did not state when or how. The Conference of London was to deal with all of the problems necessary to make the plan effective except the Ruhr evacuation.



This was arranged at the same time, but technically outside the conference, between the Governments of France and Belgium on the one side, and the Government of Germany on the other. England maintained her position that having protested the entry into the Ruhr, she would not recognize its propriety by becoming a party to an agreement for its evacuation.

All of the nations who were creditors of Germany under the Versailles Treaty participated in the London Conference. There were present also under limited instructions but carrying most weighty influence, Mr. Kellogg, our Ambassador at London, and Colonel James A. Logan, our unofficial observer in Paris, representing the Government of the United States. The great powers of England, France, and Germany were represented by so-called minority Governments. That is to say, no one of these three Prime Ministers had in his own party a majority of the Parliament for which he spoke. Under such circumstances, it was not only necessary for these Prime Ministers to satisfy themselves and their party principles but they constantly had to feel the pulse of the Parliament houses in London, Paris, and Berlin. Under such difficulties, the London Conference dragged slowly on from the 16th day of July to the 16th day of August when the final protocol was initialed by the secretaries of the different powers and the delegates went home to seek the assent of their respective Parliaments to the extent required. Let me say in connection with the London Conference that too great credit cannot be given—

First, to Mr. MacDonald, as Presiding Officer of the Conference, for his fairness and his tact, and as Prime Minister of England, for his liberal views on the one side and his devotion to the continuity of the foreign policy of his country on the other.

Second, to M. Herriot, the Prime Minister of France, who stood throughout the conference on the ground that all disputes arising under the plan should be submitted to arbitration, and that France's best security lay in her economic and financial restoration through proper reparation payments, and in the development of a more democratic Government in Germany herself.

Third, to Herr Marx, the Chancellor of Germany, who met his difficult problems, both at home and abroad, with dignity



and courage, and an openness and fairness of mind which made one feel that at last Germany had laid aside her clanking sabers and was ready to work and pay her debts.

M. Theunis, the wise Prime Minister of Belgium, was one of the ablest and most tactful participants in the Conference.

Italy, although not represented by the head of her Government, provided spokesmen who were so able and alert that they made themselves invaluable.

I cannot close this reference to the London Conference without congratulating you and the Government of the United States on the great contribution made to the success of that international meeting by Mr. Kellogg and Colonel Logan. Placed as they were in a difficult position where their merest suggestion came with the backing of one hundred and ten millions of independent and prosperous people, they showed discriminating judgment, tact, and fairness. It would be readily agreed by all participants that but for their presence, speaking for America, the Conference could not have been a success.

The Parliament of France sustained M. Herriot's commitments by a large majority. In England, Mr. Baldwin made a statement in the House saying in substance that he hoped Mr. MacDonald, the Prime Minister, understood that in his efforts to put the plan in effect, he had the backing of all parties in the Government.

Mr. Chairman, may I pause to ask is it too much to hope that some day we may establish a definite foreign policy and maintain its continuity free from the horse-play of domestic politics even with changing administrations. If so, the interests of this country and the peace and tranquillity of the world would be advanced and insured. After all is it true, Mr. President, that because our people are of different racial ingredients, they will not patriotically support a wise, courageous, definite, and non-partisan foreign policy of the United States of America? Perhaps we need to put our State Department in such a non-partisan position that all citizens, including members of the Senate, may speak and act in foreign affairs with individual independence, free from the thought or charge of being traitor to the political party of their affiliation.

In Germany, the Chancellor and his associates asked the



Reichstag for approval of the London Agreement. Two parties were in opposition. The Extreme Left, namely the Communists, opposed the plan as a new machine of capitalistic bondage. The Extreme Right, the Monarchists and Reactionaries, opposed the plan on the ground that its burdens were too heavy, and incidentally as a matter of domestic politics, because the position of the Central Democratic parties would be strengthened. A large majority of the Reichstag, but less than two-thirds, appeared on the initial votes to be in favor of the plan. It was necessary to deal with three subjects: the reorganization of the Central Bank of Issue, the imposition of \$1,250,000,000 of bonds on the industries of Germany, and the transfer of the railroads of Germany to a private company and the creation of more than \$2,500,000,000 of first mortgage bonds on the railroads for reparation account. Under the German constitution, the necessary bills for the first two, namely the reorganization of the Reichsbank and the creation of the German Industrial Bonds could be and were voted by a majority. The Railroad Bill, however, required a two-thirds vote and neither of the first two bills had received so large a majority. The Chancellor entered the Reichstag for this final vote. He held the decree of the President of Germany for the dissolution of Parliament in his pocket and frankly stated if the Railroad Bill were not voted, the Reichstag would be dissolved and an appeal would be made to the country in new elections in behalf of the plan. The vote in the Reichstag is taken by ballot, a white ballot meaning "yes" and a pink meaning "no." The Nationalist party as opponents to the plan walked to the ballot box with pink slips meaning "no" upheld in their right hands. With their left enough of them put in white ballots so that the Railroad Bill was carried. The strongest single political party in Germany did not dare reject the plan and go to the country on the propriety of their action. That their judgment was justified is shown by the elections on last Sunday. That election which strengthened the position of the Central parties at the expense of the Right and Left, would seem to show that Germany has the will to pay. If the world is convinced of that, then the greatest barrier to a final settlement of reparations will have been removed.



On August 30th, the representatives of all the powers finally signed the protocol and for the first time since the War, after due hearing and full discussion, after separate consideration of the terms in their home capitols, the great nations of the world, Germany included, meeting on equal terms, agreed. The plan was adopted.

America and England and the countries of the continent sent their money into Germany for her economic restoration based on the faith that commitments of great nations are still good security. The French and Belgium armies relinquished their hold on the industries, mines and railroads of the Ruhr and began their homeward march. They promised to complete it within twelve months provided Germany gave continuing evidence of her will to perform her obligations. So this dramatic chapter closed and a new one began two days later, on the 1st of September, 1924.

On that day the German Government which had not yet received its loan or assurance that it would be made, deposited in the Reichsbank to the credit of the Agent General for Reparations twenty million gold marks, and ten days later, an additional twenty millions. During the month of September through credits or through payments, Germany, not yet having received her loan, paid for the account of the Agent General something like ninety million gold marks, a sum substantially in excess of the eighty-three million which, under the London Conference, she had undertaken to pay during the month of September. In October, she paid large sums more, and finally, when her loan was negotiated, eight hundred million gold marks were placed in the Reichsbank, technically to the credit of the German Government, but under the control of the Agent General. This sum, together with such credits as will naturally be given to Germany, is substantially in excess of the total of one billion gold marks required of her during the first year of the plan. So far as payments are concerned, we may assume that Germany has in substance completed her obligations up to September, 1925.

The French and Belgian military and civil authorities in the Ruhr coöperated heartily and without reserve to enable the Agent General to make available these large sums to German



producers for deliveries in kind. Thereafter, deliveries in kind were no longer to be taken at the point of the bayonet; they were to be taken at the point of a check book.

So it was that France by her commitment to the protocol and by her acts in execution of it effectively denied to the world that she preferred dismemberment of Germany and the military domination of Europe to payment of reparations and her resulting financial and physical restoration. By this act France also showed that she valued the friendship of England and that she would go far to prevent the growth of a hostile sentiment against her in the United States.

May I express the hope, Mr. Chairman, that in return we will, without doing injustice to others, act towards France with a generosity which recognizes all her equities and satisfies our feeling of justice, taking into account our historical obligations and our traditional and real friendship.

England, too, made it clear that notwithstanding the competition of German goods in her own markets and in those outside, she would use her money to help finance the industrial reorganization of Germany so that turmoil on the continent might cease and stability of trade and finance might be restored. England did this when there was great unemployment in her country, when her great industries were suffering serious depression, and when in the face of all this she had, with a sportsmanship which can teach us all a lesson, scrupulously met her debts in principle and in practice.

And so it looks, Mr. Chairman, as if there were a real hope of a new day in the world. A day in which human beings in all countries may live peacefully and develop and work and save.

The plan would not have been created or adopted without America. The present Government of the United States justly claims credit for this new advance in international affairs. The original suggestion of the Experts Committee came from our distinguished Secretary of State. The Department of Commerce, whose eminent head is here to-night, furnished the largest amount of helpful information for the formulation of the plan. Our distinguished Ambassador to Germany made contact and understanding with the Germans possible. Our



able Ambassador in London and Colonel Logan were essential to the success of the London Conference. Even the President and Secretary of State were not without interest in the choice of an American citizen to sit on the Reparations Commission for the purpose of administering the plan. In a word let me say that in my opinion the present Government has done everything which could properly be done to aid in the formulation and to insure the adoption of the Dawes Plan. Personally, being of a different political faith, I feel like killing the fatted calf.

Private citizens too, have done their share. Mr. Henry M. Robinson, first as a member of the Second Committee of Experts, and later, in the installation of the plan itself, rendered services of a kind which would be hard to duplicate. Those who know him, will understand the propriety and the force of this simple statement. Mr. Rufus Dawes in charge of the office in Berlin, and Mr. George P. Auld, who established the accounting service of the Agent General, both acting as volunteers made my work easy. We have sent Mr. Thomas Nelson Perkins to become a member of the Reparations Commission, Mr. S. Parker Gilbert to act as Agent General, Mr. Sterrett to act as member of the Transfer Committee, and Mr. Gates McGarrah to sit as director for the Reichsbank and the Industrial Bank. To the citizens of New York, I can say nothing which would add to the esteem in which they are already held. To those of you who are listening in, may I say that no better men could have been found to administer the plan.

Mention should also be made of the great banking firms which have aided the execution of the plan through advances to Germany both on public and private credits. These advances should continue in such amounts as may be deemed from time to time safe and wise under the circumstances then existing. They should not be overdone. It would be desirable for America if she could act in such a way that our total advances might be from time to time ascertained and known to be conservative. If this were done, we would make the German credit situation steady rather than fluctuating and we would not subject the credit structure of the world to the strain of quick advances and quick withdrawals. A steady, firm, and conservative policy



is better for Europe and for us because after all we must remember that the ravages of ten years of economic and social demoralization cannot be repaired overnight. The surest rehabilitation of Germany will be a slow and steady and healthful growth. There should be no encouragement for her to react from this great depression into an unhealthy boom.

Then too, as stated in the plan, the restoration of Germany is not an end in itself, it is only a part of the larger problem of the reconstruction of Europe. It is not German credit and German currency alone which need to be restored in order that financial stability may return to the world. Our low bank rates and our greatly increased gold supply will if used wisely enable us not only to aid our neighbors but to help ourselves. By restoring foreign credits we will increase our export markets particularly for our excess food supplies; by stabilizing foreign currencies we will restore throughout the world the free flow of commodities including gold. When that shall have been done we shall hear less in this country, and rightly so, of artificial price levels and arbitrary bank rates.

The plan cannot succeed without the coöperation of the people of America. Have we at last realized the responsibilities which are the counterpart of our own riches? The plan is an economic program. It is not a political one. It requires for its execution the continued economic support of the United States. It does not require any direct political support or involve any political entanglement. Our agencies of business must all cooperate in support of the plan. Our men of commerce, industry, agriculture, and finance, including the Federal Reserve System, must aid in the restoration of the credit and currencies of the principal commercial nations. We may debate political participation in the affairs of the world, but we must participate in its business, and business knows no political boundaries and in its dictionary there is no such word as isolation.

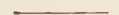
And so, Mr. Chairman, I pray that this favored nation may meet the responsibilities of her great position. I ask that business may be carried on internationally, without sentiment, but with vision and with courage. I ask that the spirit behind that business may be a worthy expression of the character of our people and worthy in the sight of God.







ANECDOTES  
AND  
EPIGRAMS



INDEX







## ADVERTISING

Advertising begins when the crying child first advertises his wants to his mother, and ends only with the epitaph on the headstone in the village cemetery.—EDWARD S. JORDAN.

An advertising lead is exactly as good as the salesmen think it is.—H. F. DEBOWER.

Words that sing to the pocket-book.—JAMES W. YOUNG.

In the use of printer's ink be human, be natural, and speak in the language of the people.—IVY LEE.

If there be any romance in advertising, it begins with the miracle of the printed page, the power of words to set a flame to men's imagination and fill them with such warm desires as lead them on to action.—JAMES W. YOUNG.

This is the age of publicity, whether we like it or not. Democracy is inquisitive and won't take things for granted. It will not be satisfied with dignified silence, still less with resentful silence.—OTTO H. KAHN.

Publicity, which is just another name for advertising, is really just another name for public opinion, and public opinion rules the world.—EDWARD S. JORDAN.

The first object of any policy of publicity, I therefore repeat, is that the management itself gain the personal confidence of the people.—IVY LEE.



## AMBITION

Ambition is the motive power in a man's make-up.

Ambition is like electricity; useful when properly controlled, dangerous when uncontrolled.

Genius and ambition laugh at precedent.

We can't all be top-notches, but we can all climb a little higher than we are and thus relieve the congestion at the foot of the ladder.

Doing well is all right, but when a man reaches the point where he doesn't want to do better, he is done for.

He who does not soar high will suffer less by a fall.

The height of the pinnacle is determined by the breadth of the base.—EMERSON.

No man can end by being superior who will not begin with being inferior.—SYDNEY SMITH.

Full many a gem of purest ray serene  
The dark unfathom'd caves of ocean bear;  
Full many a flower is born to blush unseen,  
And waste its fragrance on the desert air.

—THOMAS GRAY.

Unless above himself he can  
Erect himself, how poor a thing is man.

—SAMUEL DANIEL.

'Tis immortality to die aspiring,  
As if a man were taken quick to heaven.—CHAPMAN.



## BUSINESS

Talk of nothing but business, and dispatch that business quickly.—ALDUS.

Keep thy shop, and thy shop will keep thee.—CHAPMAN.

Dispatch is the soul of business.—CHESTERFIELD.

Drive thy business, let not that drive thee.—BENJAMIN FRANKLIN.

Mathematics only records business; it does not conduct it.

If you would have your business done, go; if not, send.—BENJAMIN FRANKLIN.

Resourcefulness is the master-key that fits all the locks of business requirements.—WALDO WARREN.

Business is like baseball, the hits you made yesterday won't win the game to-day.

Never leave business to look for business. Never discount the business you can get to-day for the business you may get to-morrow.—HUGH CHALMERS.

It makes a great deal of difference whether you retire from business or the business retires from you.

The last two decades have witnessed changes that make necessary an entirely new order of ability in business life. Those changes demand a greatly superior training.—FRANK A. VANDERLIP.



## COÖPERATION

We must all hang together, or assuredly we shall all hang separately.—BENJAMIN FRANKLIN.

Be loyal to the people with whom you associate at the start.  
—CHARLES M. SCHWAB.

He is the rich man who can avail himself of other men's faculties. He is the richest man who knows how to draw a benefit from the labors of the greatest number of men.—EMERSON.

Every employee pays for superintendence and inspection. Some pay more and some less, that is to say, a dollar-a-day man would receive two dollars a day were it not for the fact that some one has to think for him, look after him and supply the will that holds him to his task. The result is that he contributes to the support of those who superintend him,—ELBERT HUBBARD.

All your strength is in your union,  
All your danger is in discord;  
Therefore be at peace henceforward,  
And as brothers live together.—LONGFELLOW.

It ain't the guns nor armament, nor funds that they can pay,  
But the close coöperation that makes them win the day—  
It ain't the individual nor the army as a whole,  
But the everlastin' team-work of every bloomin' soul.  
—RUDYARD KIPLING.



## DECISION

Behind every career is a decision.

Make decisions—don't expect them.

Don't think it over—put it over.—MAX SCHROEDER.

The man who lacks courage to make a start has already reached the finish.—L. M. CRANDALL.

When once a decision is reached and execution is the order of the day, dismiss absolutely all responsibility and care about the outcome.—WILLIAM JAMES.

Not only strike while the iron is hot, but make it hot by striking.—OLIVER CROMWELL.

The indefinite idea produces the indefinite action. The uncertain man produces the uncertain results.

Nowhere is the goal of him who follows the route of Anywhere. The man who aims at nothing in particular, invariably hits his mark.

Your If is the only peacemaker ; much virtue in If.—SHAKESPEARE.

One single positive weighs more,  
You know, than negatives a score.—MATTHEW PRIOR.

Once to every man and nation comes the moment to decide,  
In the strife of Truth with Falsehood, for the good or evil  
side.—LOWELL.



## EFFICIENCY

An efficient man is a man who can do what he ought to do when he ought to do it, whether he wants to do it or not.

The habit of making knowledge power is efficiency.—NICHOLAS MURRAY BUTLER.

Efficiency? Yes, we are all seeking it, but it comes not by any royal road or through the medium of any heaven-born genius. Any scheme of efficiency that takes the heart out of the worker is a sham and a delusion. We must develop the human side as well as the mechanical side—the man and the woman as well as the engineer or clerk.—GEORGE BRUCE CORTLYOU.

Get facts; look far; think through.—WILLIAM C. REDFIELD.

Lucks counts once in a while; trained efficiency counts all the time.

To be able to ask a question clearly is two-thirds of the way to getting answered.—RUSKIN.

Freedom and hope increase not only man's willingness but also his power for work.

Don't be so busy doing small things that you fail to see your opportunity to do large ones.

In to-day's strenuous business life, the man who half finishes a job, finishes himself.



## ELOQUENCE

Eloquence may be defined as the speech of one who knows what he is talking about and means what he says—it is thought on fire.—WILLIAM JENNINGS BRYAN.

How forcible are right words.—OLD TESTAMENT.

The living voice is that which sways the soul.—PLINY THE YOUNGER.

A word fitly spoken is like apples of gold in pictures of silver.—OLD TESTAMENT.

True eloquence consists in saying all that is proper and nothing more.—LA ROCHEFOUCAULD.

Let your speech be always with grace, seasoned with salt.—NEW TESTAMENT.

As the grace of man is in the mind, so the beauty of the mind is eloquence.—CICERO.

The ability to speak effectively is an acquirement rather than a gift.—WILLIAM JENNINGS BRYAN.

They have been at a great feast of languages, and stolen the scraps.—SHAKESPEARE.

The less said, the sooner mended.

Know it—say it straight—and quit at the end.



## ENTHUSIASM

Nothing great was ever achieved without enthusiasm.—  
EMERSON.

Enthusiasm is the life of the soul;  
Either I will find a way, or make one.

—WORDSWORTH.

I like the man who bubbles over with enthusiasm. Better be a geyser than a mud puddle.—JOHN G. SHEDD.

Be intensely in earnest. Enthusiasm invites enthusiasm.—  
RUSSELL H. CONWELL.

Cash can buy, but it takes enthusiasm to sell.

Enthusiasm is the white heat which fuses all a man's business qualities—ability, initiative, knowledge, tact, industry and the rest—into one effective whole.—HUGH CHALMERS.

Thoroughness plus enthusiasm equals success. Try it.—  
HAROLD A. HOLMES.

The man or woman of enthusiastic trend always exercises a magnetic influence over those with whom he or she comes in contact.—H. ADDINGTON BRUCE.

Enthusiasm is that thing which makes a man boil over for his business, his family and his hobby, and for anything his heart is in.—HUGH CHALMERS.

No man can get very far these days without enthusiasm. And enthusiasm is nothing more or less than business itch.—  
F. D. VAN AMBURGH.



## EXPERIENCE

Experience keeps a dear school, but fools will learn in no other.—BENJAMIN FRANKLIN.

The great trouble with the school of experience is that the course is so long that the graduates are too old to go to work.—HENRY FORD.

It is a singular thing that the most expensive experience is the kind that the poor man and the weak man always acquire.—FRANK CHANNING HADDOCK.

Fools learn by experience, but the wise by the experience of others, and the way of the guesser is hard.

The chief value of the fool's experience is its worth to others.—FRANK CHANNING HADDOCK.

I have but one lamp by which my feet are guided, and that is the lamp of experience. I know no way of judging of the future but by the past.—PATRICK HENRY.

It may be admitted that experience is the best teacher, but the man who relies exclusively on his own experience, gets a very limited education.

I know not what profit there may be in the recorded experience of the past, if it be not to guide us in the present.—DISRAELI.



## INDUSTRY

Industry is the only coin acceptable at the gate of success.

Whatsoever thy hand findeth to do, do it with thy might.—  
OLD TESTAMENT.

Better to wear out than to rust out.—BISHOP CUMBERLAND.

Seest thou a man diligent in his business? He shall stand before kings; he shall not stand before mean men.—OLD TESTAMENT.

Nowher so besy as man as he ther n' as,  
And yet he seemed besier than he was.—CHAUCER.

Too busy with the crowded hour to fear to live or die.—  
EMERSON.

The more we do, the more we can do. The busier we are,  
the more leisure we have.—HAZLITT.

Go to the ant, thou sluggard; consider her ways and be wise.  
—OLD TESTAMENT.

It is not enough to be industrious; so are the ants. What  
are you industrious about?—THOREAU.

The busy man,—like Joshua—always makes the sun to stand  
still—always lengthens the day by simply putting more into  
it.—RICHELIEU.

Go at your work each day as though it were your first day in  
a new job and you had to make good.



## INITIATIVE

Initiative is doing the right thing without being told.—  
ELBERT HUBBARD.

The reason most men don't accomplish more is because they  
don't attempt more.

The early bird catches the worm.

What is the use of going right over the old track again? . . .  
You must make tracks into the unknown.—HENRY DAVID  
THOREAU.

Many a man is satisfied to follow the crowd, and even then  
only at a safe distance.

Heaven never helps the man who will not act.—SOPHOCLES.

We can all learn this lesson from Robinson Crusoe—he used  
what he had to get what he wanted—now.—NORVAL A. HAW-  
KINS.

He who has misgivings as to the finish will never start any-  
thing.

The world reserves its big prizes for but one thing, and that  
is initiative. Initiative is doing the right thing without being  
told. Next to doing the thing without being told, is to do it  
when you are told once.—ELBERT HUBBARD.

Be not the first by whom the new is tried,  
Nor yet the last to lay the old aside.—POPE.



## KNOWLEDGE

He that hath knowledge spareth his words.—OLD TESTAMENT.

Knowledge in youth is wisdom in age.

Knowledge is the antidote to fear.—EMERSON.

There is one only good, namely, knowledge; and one only evil, ignorance.—SOCRATES.

Learning is an ornament in prosperity, a refuge in adversity, and a provision in old age.—ARISTOTLE.

I pity unlearned gentlemen on a rainy day.—LORD FALKLAND.

The world wears a path to the door of the man who knows.—EMERSON.

The men who do are the men who know.—MARCUS AURELIUS.

As a general rule the most successful man in life is the man who has the best information.—DISRAELI.

It is no shame for a man to learn that which he knoweth not, whatever be his age.—SOCRATES.

You don't know your own game, if that is all you know.—W. H. LOUGH.

Knowledge is of two kinds; we know a subject ourselves, or we know where we can find information upon it.—SAMUEL JOHNSON.



## LAW

The laws of a nation form the most instructive part of its history.—GIBBON.

The laws sometimes sleep but never die.

Better no law than law not enforced.

The law is the last result of human wisdom acting upon human experience for the benefit of the public.—SAMUEL JOHNSON.

Woe unto you, lawyers! for ye have stolen away the key of knowledge.—NEW TESTAMENT.

A Lawyer art thou?—draw not nigh!  
Go, carry to some fitter place  
The keenness of that practiced eye,  
The hardness of that sallow face.—WORDSWORTH.

Better ten guilty escape than one innocent man suffer.

Agree with thine adversary quickly.—NEW TESTAMENT.

A lawyer without history or literature is a mechanic, a mere working mason; if he possesses some knowledge of these, he many venture to call himself an architect.—SIR WALTER SCOTT.

A lawyer is a learned gentleman who rescues your estate from your enemies and keeps it to himself.—LORD BROUGHAM.

To live by the bar you must live like a hermit and work like a horse.—LORD ELDON.



## EPIGRAMS

Good counselors lack no clients.—SHAKESPEARE.

Give me the making of the songs of the people; I care not  
who makes their laws.

I am further of the opinion that it would be better for us to  
have no laws at all than to have them in so prodigious numbers  
as we have.—MONTAIGNE.

God works wonders now and then,  
Here lies a lawyer, an honest man.

He will embark in litigation even if a donkey has bitten  
his dog.

The hungry judges soon the sentence sign,  
And wretches hang that jurymen may dine.—POPE.



## LEADERSHIP

A public man of light and leading.—DISRAELI.

If you want to be a leader of the people you must watch events.

Leaders are ordinary persons with extraordinary determination.—HERBERT KAUFMAN.

Responsibilities gravitate to the person who can shoulder them, and power flows to the man who knows how.

We need trained, disciplined men who know and who can think—men whose judgments are steadied by knowledge.—WOODROW WILSON.

The master minds in business are those who through their knowledge of fundamental principles are able to organize and direct the efforts of others.—V. CLEMENT JENKINS.

It is only the man who is bigger than his job who gets the bigger job.

The fire of God  
Fills him. I never saw his like; there lives  
No greater leader,—TENNYSON.



## MONEY

Remember that time is money.—BENJAMIN FRANKLIN.

A penny saved is twopence clear.

Money is a universal language speaking any tongue.

Money is the fruit of evil as often as the root.—FIELDING.

Money is a good servant but a bad master.

Superfluous wealth can buy superfluities only. Money is not required to buy one necessary of the soul.—HENRY DAVID THOREAU.

Excess of wealth is cause of covetousness.—MARLOWE.

God send you more wit and me more money.

With money you would not know yourself, without money nobody would know you.

To lose money ill is indeed often a crime; but to get it ill is a worse one, and to spend it ill worst of all.—RUSKIN.

No man has a right to go into business and not make money. It is a crime to go into business and lose money, because it is a curse to the rest of the community. No man has a moral right to transact business unless he makes something out of it. He has also no right to transact business unless the man he deals with has an opportunity also to make something. Unless he lives and lets live, he is not an honest man in business. There are no exceptions to this great rule.—RUSSELL H. CONWELL.



## OPPORTUNITY

Observe the opportunity.—OLD TESTAMENT.

While we stop to think we often miss our opportunity.—  
PUBLIUS SYRUS.

A man must make his opportunity as oft as find it.—BACON.

Opportunities are more powerful than conquerors or prophets.

Mastery finds a short cut to opportunity.

Opportunity is simply another name for your mental attitude.  
It's all in the way you feel about things.

We've equalized opportunity. This is the most that society  
can do—it cannot equalize men.—HERBERT KAUFMAN.

Life is merely a series of opportunities for turning failures  
into successes.—PETER COOPER.

Don't nurse opportunity too long—take it into active part-  
nership at once.

Don't be so busy doing small things that you fail to see your  
opportunity to do large ones.

Many a man owes his success to the fact that in an emer-  
gency he could step in and do the work of the man ahead, and  
many a man owes his defeat to the fact that when the oppor-  
tunity was his, he could not rise to meet it.



## ORGANIZATION

Organization is the ability to bring all available knowledge and all available energy to bear upon particular problems in hand at the precise time when needed.—HERBERT SPENCER.

Organization without coöperation is like a fiddle with one string—some notes but not much music.

No man can help make an organization greater, better, more successful and more efficient without making himself the same.

The only reason we have gotten anywhere in this business reorganization of government is because we have not only completely absorbed, but I say completely demonstrated, the truth that the proper machinery with which to run governmental routine business must be similar to the machinery to run private routine business.—CHARLES G. DAWES.



## SALESMANSHIP

Many a good salesman never hoists the mainsail.

The first man that a salesman ought to sell is himself.—  
HUGH CHALMERS.

To sell even a live proposition requires a salesman who is in dead earnest.—R. W. SMILEY.

A salesman's selling honor is his best selling asset.—DEAN SWIFT.

In salesmanship the greatest possible unselfishness is the most enlightened selfishness.—CHARLES M. SCHWAB.

There are two kinds of salesmen; one gets business through friends, and the other develops friends through business.—BILL WRIGHT.

One may be a gentleman, a scholar, a possessor of all the good qualities that go to make up a perfect man, but if he cannot sell goods, he is no salesman.

The surest way to improve your salesmanship is to improve yourself.—GLEN BUCK.

A real salesman is one-part talk and nine-parts judgment and he uses the nine-parts of judgment to tell when to use the one-part of talk.—ALEXANDER H. REVELL.

The best salesman is the chap who gets over on the customer's side and looks at his own proposition through the individual buyer's eyes.



## SERVICE

Small service is true service while it lasts.—WORDSWORTH.

The slogan of business to-day is not "dollars" but "service."

The true test of education lies in its possessor's ability to serve.—ELBERT HUBBARD.

The vocation of every man and woman is to serve other people.—TOLSTOI.

Service: Give all we can for what we get instead of getting all we can for what we give.

Success, in my mind, can lie only where there is a real service performed for the benefit of your community, your state, or your nation.—JOHN HAYS HAMMOND.

All men seek one goal—Happiness. Happiness (which is true success) can be found only through expressing all one's physical, mental, and spiritual power in usefulness to others.—ARISTOTLE.

Who gives himself with his alms feeds three,—  
Himself, his hungering neighbor, and me.

—JAMES RUSSELL LOWELL.

God doth not need  
Either man's work, or his own gifts; who best  
Bear his mild yoke, they serve him best: his state  
Is kingly; thousands at his bidding speed,  
And post o'er land and ocean without rest;  
They also serve who only stand and wait.—MILTON.



## SUCCESS

Nothing succeeds like success.—DUMAS.

The secret of success is constancy to purpose.—DISRAELI.

Common things, uncommonly well done, pave the way to success.

Success comes in cans, failure in can'ts.

The secret of success in life consists in knowing how to change men's minds.—FRANK CRANE.

Any man is a success who can do his work without supervision.—ELBERT HUBBARD.

We must not lower the level of our aim that we may more surely enjoy the complacency of success.—RUSKIN.

Success is merely a matter of buying experience and selling it at a profit.

Men are so constituted that every one undertakes what he sees another successful in, whether he has the aptitude for it or not.—GOETHE.

The key to the store house of success is education, preparation, concentration and perspiration. The lock cannot be picked by poor work, spite work, guess work or no work.

The longer I live, the more I'm convinced that success doesn't come from lying awake nights, but from keeping awake in the day time.



## VISION

Where there is no vision the people perish.—OLD TESTAMENT.

Your old men shall dream dreams, your young men shall see visions.—OLD TESTAMENT.

No man that does not see visions will ever realize any high hope or undertake any high enterprise.—WOODROW WILSON.

In the long run men hit only what they aim at. Therefore, though they should fail immediately, they had better aim at something high.—HENRY DAVID THOREAU.

The great part of all the mischief in the world arises from the fact that men do not sufficiently understand their own aims. They have undertaken to build a tower, and spend no more labor on the foundation than would be necessary to build a hut.—GOETHE.

Vision has ever been the guiding angel of mankind; throughout history it has always been the man of vision who has led. No progress has ever been made without it and a nation's greatest assets are its men of vision, whether educators, statesmen, inventors or industrialists.—J. G. JONES.

A dreamer of the common dreams,  
A fisher in familiar streams,  
He chased the transitory gleams  
That all pursue;  
But on his lips the eternal themes  
Again were new.—WATSON.



## ANECDOTES

### THE DEAD HAND

Daniel Webster is remembered chiefly for his ponderous eloquence and is not generally credited with having a light vein which was quite as effective as his words that "weighed a ton." He and Choate were pitted against each other in a will contest, at Springfield, Mass., Choate endeavoring to break the will, and Webster defending it. Choate dwelt on the alleged inequalities of the will, and especially anathemized the power of the "dead hand," and in closing his address to the jury said, "Gentlemen of the jury, look here upon the living, with all the hopes, fears, anxieties and tribulations of the living—think of them, and the dark auguries of their future—while John Smith is *dead*—DEAD—DEAD!" Silence reigned in the court room and it was supposed that the case was settled for the plaintiffs. But when Webster arose, he turned briskly to the jury, and in a quick, rather jaunty tone, said, "Gentlemen of the jury, this is an attempt to break the last will and testament of John Smith of Hampden County, yeoman! And when he made this will he wasn't dead, dead, dead!" The last three words uttered rapidly and with a half-suppressed titter brought the whole room to the verge of laughter. A prompt verdict sustained the will.—*Dr. Adolf A. Berle.*

### CAN'T TAKE KNOWLEDGE FOR GRANTED

"Pardon me," said the late Justice Van Brunt of the Appellate Court, interrupting long quotations from authorities by a young lawyer who sought a reversal of the verdict against him, "I suggest that you get down to the merits of your own case."

"Presently, your Honor, presently," responded the young lawyer. Yet he continued with renewed earnestness to expound the law as he saw it.

"Let me suggest to you," said Justice Van Brunt, interrupting again, "that you get down to the merits of your case and



take it for granted that the Court is familiar with the elementary principles of law."

"No, your Honor, no," declared the young lawyer, with sincerity. "That was the mistake I made when I argued this case in the lower court."—*Louis Wiley.*

## NO SECOND

A suit was brought in Justice Court by attorney representing a non-resident; the law required that a non-resident should give security for costs of court; no security was given. The Justice of the Peace was not at all learned in the law, but had had some experience in presiding over rural assemblies and had at least heard that there is such a thing as Parliamentary Law. When the case came on to be heard defendant's counsel arose and moved that the suit be dismissed on the ground that no security for costs had been given, as required by the statute. The old Justice sat in an expectant attitude, glancing from time to time at the plaintiff's counsel; hearing nothing further from either side, he finally turned to defendant's counsel and said: "Your motion is lost for want of a second."—*W. B. Bowling, M. C.*

## HAD ITS ADVANTAGES

The late Joseph H. Choate when counsel for a large railroad called in Edward Lauterbach, then a young lawyer, to assist him in some routine work. On completion, Lauterbach submitted a bill for \$500. Choate looked at it and turning to Lauterbach said, "Is this what you figure your services to be worth?" Lauterbach replied, "Why yes, Mr. Choate, as it's for a large railroad I didn't think it too much, but if you think so I'll cut it down." Choate said, "Humph, hand me that pen!" He took the pen and wrote the figure 2 in front of the \$500, making the bill \$2500, and handed it back to Lauterbach said, "That's a little more like it." Lauterbach looked at Choate with admiring eyes and said: "Verily, Mr. Choate, thou almost persuadest me to be a Christian."—*Charles J. Wiley.*



## UNFORTUNATE

Ex-Senator James Hamilton Lewis, then corporation counsel for the City of Chicago, was arguing before the United States Supreme Court the property damage cases resulting from alterations in the street railway tunnel under the Chicago River. After he had been upon his eloquent way for a half hour or more, the late Chief Justice White, leaning impressively forward, declared in his most "pulverizing" tone:

"Colonel Lewis, I am utterly unable to understand at what you are driving."

The eminent counsel paused, carefully "frisked" his roseate whiskers, adjusted his vest and replied:

"Unfortunate, your Honor."

Mr. Lewis was not again interrupted by the Chief Justice.  
—*George M. Morris.*

## IMPERSONATING AN OFFICER

A Greek fruit vender complained vehemently to the police captain Heidelmeier, of Chicago, that each night a stranger passing his outside fruit stand helped himself to the fruit. Captain Heidelmeier said, "All right, I'll send a fly-cop over to-night." This detective caught the culprit in the act and walked him over to the police station where the captain was seated ponderously at his desk. The detective, on presenting his man, said, "Well, Captain, we got this bird who has been stealing the fruit over at Kostakos Bros. What will I book him for?" The old veteran was silent for a moment with his finger poised on the side of his nose, then he shouted, with a twinkle in his eye, "Book him for impersonating an officer."—*Oscar G. Mayer.*

## CONSTRUING THE LAW LITERALLY

In a small town an old fellow owned a goat, intrinsic value possibly \$1.50. The goat was extremely belligerent and his favorite battle ground was Main Street. When tax bills appeared the owner found his goat assessed at \$20. Highly indignant he went to the town assessor and laid the case before him. The assessor (who was also Justice of the Peace) took



down a well-worn copy of the city ordinances and read to him a section as follows: "Property abutting on Main Street shall be assessed at \$10 per front foot."—*T. D. Evans, Mayor, Tulsa, Oklahoma.*

### A TIME IN EVERY MAN'S LIFE

The applicant for clemency before the State Board of Pardons in Nebraska had been party to the theft of an automobile. He came from one of the smaller communities of the state and his parents were respectable, though poor. The gentleman who represented him as counsel before the Board was not known to have a very large practice at the Bar, and his efforts were directed, principally, toward impressing the Board with the humanitarian aspects of the case. It may be imagined, therefore, that full vent was given to his feelings, and flights of eloquence were liberally employed. Finally, after reciting that the applicant had been incarcerated in the penitentiary for an unusual length of time, that his parents were poor and needed his support, and that he had previously appeared before the Board, he dramatically closed his arguments with this statement: "And, gentlemen of your honorable Board, you must bear in mind that there comes a time in every man's life when he should not be in the penitentiary."—*Gov. Samuel R. McKelvie.*

### CONTEMPT OF COURT

The defendant was being tried for assault in the first degree, having badly beaten up the complaining witness. The defense's attorney in his zeal to protect the interest of his client, made many exceptions and offered to introduce certain evidence all of which was held to be irrelevant, incompetent, and immaterial, by the presiding Court. The attorney for the defense became quite indignant, in fact, very angry at the ruling of the presiding Judge, but being at a disadvantage was not able to satisfactorily express his feelings of contempt for the Court until he began to argue the case before the jury.

Upon rising to present his argument to the jury, he faced the Court, and instead of addressing him in the commonly expected



terms, as, "May it please your Honor," or as, "May it please the Court," he said:

"You damn scoundrel."

Whereupon the Court arose from his seat, with a look of surprise and anger upon his face. Counsel then addressing the Court and jury said this:

"This is what the complaining witness called my client, your Honor and gentlemen of the jury," and from there on argued that the man was justified in making the assault.

Whether or not he won his case is not a matter of record, but he at least, had the satisfaction of expressing his feelings toward the presiding Judge.—*Thos. P. Revelle, Seattle, Wash.*

### SAVED

Some lawyers seem to have no sense of honor in the means by which they try to discredit the testimony of those opposed to them; in illustration of which we need only adduce the following specimen of cross-questioning. Counsel: "Mr. Jenkins, will you have the goodness to answer me, directly and categorically, a few plain questions?" Witness: "Certainly, sir." "Well, Mr. Jenkins, is there a female living with you who is known in the neighborhood as Mrs. Jenkins?" "There is." "Is she under your protection?" "Yes." "Do you support her?" "I do." "Have you ever been married to her?" "I have not." (Here several jurors scowled gloomily on Mr. Jenkins.) "That is all, Mr. Jenkins." Opposing Counsel: "Stop, one moment, Mr. Jenkins; is the female in question your mother?" "She is."

### REMISSION

Once in a Kentucky court Tom Marshall was using quite abusive language, and the judge, after one or two reprimands, fined him ten dollars for contempt. Mr. Marshall looked at the judge with a smile and asked where he was to get the money, as he had not a cent. "Borrow it of a friend," said the court. "Well, sir," answered Mr. Marshall, "you are the best friend I have; will you lend me the money?" "Mr. Clerk," said the



judge, "you may remit the fine. The State is as able to lose it as I am."

### NEPOTISM

A Persian merchant, complaining heavily of some unjust sentence was told by the judge to go to the *cadi*. "But the *cadi* is your uncle," urged the plaintiff. "Then you can go to the grand vizier." "But his secretary is your cousin." "Then you may go to the sultan." "But his favorite sultana is your niece." "Well, then, go to the devil!" "Ah! that is still a closer family connection," said the merchant, as he left the court in despair.

### BOTH CORRECT

The suit was for slander, and had assumed the form of a cross-suit for the improper use of the unruly member. Counsel on each side was of the highest standing. All Virginians will assent to this when told that Samuel Taylor was for the plaintiff and Benjamin Watkins Leigh for the defendant. The Court being opened and the case being called, the judge replied: "Mr. Taylor, are you ready in this case?" Mr. Taylor replied, "If Jerry Moody is here, I am ready." "Mr. Leigh, are you ready?" "May it please your Honor, I am ready if Jerry Moody is here." "Sheriff, call Jerry Moody." The sheriff went to the door and lustily called thrice for Jerry Moody to come into Court. Soon Jerry, a tall, thin, straight man, came forward. The jury were sworn. Then Jerry was sworn. In his solemn and forcible manner Mr. Taylor said to the witness, "Be so good as to tell the Court and jury all you know about this case." Witness said: "Well, I have often heard the defendant say that the plaintiff was a rogue, a thief, and a liar; and I have often heard the plaintiff say that the defendant was a rogue, a thief, and a liar; and they were the only times I ever heard either of them tell the truth."

### OBLIGING THE JUDGES

A barrister was met by a friend the other day in the street, laden with a lot of law books. Pointing at the books, his friend said, "Why I thought you carried all that stuff in your head!"



"I do," quickly replied the lawyer, with a knowing wink; "these are for the judges."

### WOULD NOT JOIN THE GANG

There is a story of how Judge Grier set aside the unjust verdict of a jury against an unpopular man, with the remark, "Enter the verdict, Mr. Clerk. Enter, also, set aside by the Court. I want it understood that it takes thirteen men to steal a man's farm in this Court."

### WOULD NOT DISTURB HIM

A friend having pointed out to Sheridan that Lord Kenyon had fallen asleep at the first representation of the great wit's play, "Pizarro," and that, too, in the midst of Rollo's fine speech to the Peruvian soldiers, the dramatist felt rather mortified; but, instantly recovering his usual humor, he said: "Ah, poor man! let him sleep; he thinks he is on the bench."

### CONTEMPT OF COURT

There was a very irascible old gentleman who formerly held the position of justice of the peace in one of our cities. Going down the main street one day, a boy spoke to him without coming up to his honor's idea of deference. "Young man, I fine you five dollars for contempt of Court." "Why, Judge," said the offender, "you are not in session." "This Court," responded the judge, thoroughly irritated, "is always in session, and consequently always an object of contempt!"

### BUYING A VERDICT

"It's a hundred dollars in your pocket," whispered the defendant's lawyer to the juror, "if you can bring about a verdict of manslaughter in the second degree." Such proved to be the verdict, and the lawyer thanked the juror warmly as he paid him the money. "Yes," said the juror, "it was tough work, but I got there after a while. All the rest went in for acquittal."



## HIS CLIENT WON OVER

Governor S—— was a splendid lawyer, and could talk a jury out of their seven senses. He was especially noted for his success in criminal cases, almost always clearing his client. He was once counsel for a man accused of horse stealing. He made a long, eloquent, and touching speech. The jury retired, but returned in a few moments and, with tears in their eyes, proclaimed the man not guilty. An old acquaintance stepped up to the prisoner, and said: "Jem, the danger is past; and now, honor bright, didn't you steal that horse?" To which Jem replied: "Well, Tom, I've all along thought I took that horse; but since I've heard the Governor's speech, I don't believe I did!"

## A GREAT LAWYER ON WORK

Rufus Choate believed in hard work and struggle. When some one said to him that a certain fine achievement was the result of accident, he exclaimed: "Nonsense! You might as well drop the Greek alphabet on the ground and expect to pick up the Iliad."

## DISQUALIFIED

The plaintiff in a suit brought against the City of New York had been injured by a fall, caused by "a corporation hole," and during the trial, Dr. Willard Parker being upon the stand in behalf of the plaintiff, the associate counsel of the city cross-examined him, and elicited the remark that the plaintiff was so injured that he could lie only on one side. The answer was no sooner given than the counsel said: "I suppose, doctor, you mean he would make a very poor lawyer?"

## SILENCE IS GOLDEN

A pert young lawyer once boasted to a member of the Bar that he had received two hundred dollars for speaking in a certain lawsuit; the other replied, "I received double that sum for keeping silent in that very case."



## BUSINESS

### UNEMPLOYMENT HIS OCCUPATION

A man, unmistakably a laborer, was smoking thoughtfully and watching a large building in process of construction. Being short-handed the foreman approached him and asked:

"Hey, you, want a job?"

"Yes," was the reply, "but I can only work mornings."

"Aw, shucks! Why can't you work all day?"

"Well, every afternoon I got to carry a banner in the unemployment parade."—*W. S. Ashby.*

### A WAY OUT OF THE DIFFICULTY

A business man called his stenographer and told her to write a letter to John White of Buffalo making an appointment to meet him at Schenectady.

"How do you spell Schenectady, Mr. Blank?"

"Why, the idea! Don't you know how to spell Schenectady?"

"No."

"Why, er—Oh, well, tell him I'll meet him in Albany."—*Henry E. Chamberlain, Mayor, Concord, N. H.*

### WAS THE NOTE RENEWED?

The banker was obstinate. He wouldn't renew the note. Times were bad, and the bank was entitled to its money. The borrower moved wearily to the door. Over his shoulder he said:

"Well, I never knew before you had a glass eye."

"Come back," said the banker. "How did you know I have a glass eye? I had an accident years ago and the glass imitation was so well done that no one has ever detected it before."

"Well," said the borrower, "I thought one of your eyes had a gleam of human kindness and I knew that it couldn't be natural."—*Walter Lichtenstein.*



## ADVERTISING AND OMELETS

An ambitious advertising agency man was trying to explain to a seasoned carpet man the advantages of increasing his business through advertising. The carpet man said, "What do you know about my business? You never laid a carpet in your life!" The agency man replied, "No, but I never laid an egg either and I can make a better omelet than any hen in the world!"—*William T. Mullally.*

## A BLAZE OF PROSPERITY

"We are on the eve of business prosperity in America to-day. All we need is something to fan the present spark into a big nation-wide blaze. A leader, either an individual or an organization collectively, can start this blaze by so convincingly telling the great buying public of this country of the coming prosperity that manufacturers, retailers, and the public alike will act upon that suggestion.

"American business to-day I like to picture as a sheet-iron camp stove up in my Maine log cabin. When I hunt in the fall the last thing I do before turning in at night is to prepare the fire by laying shavings, kindling, and logs of wood, and then putting some matches on the chair near the stove.

"When I wake up in the morning chill, Oh how I hate to get up! although I know that all I have to do is to jump out of bed, strike a match, touch the kindling with it, jump back into bed, and in a very few minutes the draught in that old sheet-iron stove will just roar up the chimney and fill that cabin with warmth and comfort.

"And so my friends, the right kind of a spark applied to-day to American business will fill the industrial hearths of this country with warmth and comfort, and hasten the prosperity which is to-day almost within reach."—*George Carsten Frolich.*

## ADVANTAGES OF CROSS-EVES

A good many years ago I was employed by an agricultural implement manufacturing company, and was sent into my native state, Vermont, to sell their goods. I arrived one day in



a town at twelve o'clock, and in twenty minutes there was a train going back down the road, and if I could see my man and get his order in twenty minutes I could double back and make two towns that day instead of one. So I ran up to Smith's store and asked the clerk if Mr. Smith was in, and he said he was not, but that he was putting a tin roof on a house just a little way down the road, and if I hurried I would be able to see him and catch the down train. So I ran again down to the house, climbed the ladder, and on the roof were five men. One of them had on a white shirt and a white collar, so I felt sure he was the Mr. Smith I wanted to see. I looked up at him and asked, "Am I looking at Mr. Smith?" He answered, "If you can tell where you are looking, you can do a damn sight better'n I can."

I almost laughed myself off that ladder, which, as a matter of course, pleased the dealer.

I immediately put my left hand over my left eye and pointed at him with my right hand and said, "With this eye I am looking at you and for an order for six lever feed cutters at \$3.50 each, and with the other eye I am looking for the down train"; and he said, "You've got the order, get the train. Good-by, sir."—*Horatio Sawyer Earle.*

### SALESMANSHIP

Several years ago, I heard Elwood Haynes, the inventor of the automobile, say at a sales meeting: "Salesmanship is a peculiar thing—the best salesmen we ever had gave us the most trouble. Half the cars he sold came back on our hands. Some of the people he sold came clear to Kokomo to have them fixed up." After a while, a field representative said, "Mr. Haynes, I'd like to call on Mr. So-and-so—he's our agent in North Carolina. I have never had any trouble to adjust in his territory."

Mr. Haynes called on the young Southerner, who said that Elwood Haynes was the greatest man who ever lived. He declared he had never had a single dissatisfied user of the Haynes car in his territory.

Then I said: "Mr. Haynes, you say the best salesman you ever had gave you the most trouble, because about half the



cars he sold came back for adjustment. Did that man sell a different kind of car than the car you shipped to this gentleman in North Carolina?"

Mr. Haynes said, "What do you mean by different cars?"

I said, "When you shipped those cars out, did the people your best salesman sold get the same kind of cars as those shipped to North Carolina?"

Mr. Haynes replied, "Our cars are all uniform. Our North Carolina dealer had exactly the same cars to sell as the man whom I have just said was our best salesman."

Then I said, "Well, I am going to take issue with your statement that he was the best salesman you ever had. He was the worst salesman you ever had. I believe this North Carolina dealer who sells your cars and never has any trouble with them did something to the mental attitude of the buyer before he sold them a car. He puts his buyer's mind in a relationship toward the car that anticipates all conditions of trouble."

The young Carolina dealer confirmed my opinion by saying: "I never allow a man to take a car out of the place unless I'm satisfied that he knows how to run it. I've got to be satisfied that if he had any minor difficulty with it he'd be ashamed to tell me about it because it would be a reflection upon his ability as a driver.

"The buyer's satisfaction with his ability as a driver means nothing to me until I am satisfied from watching him handle the car that he knows as much as he thinks he does. I am the man to be satisfied with his knowledge or I find excuses to keep him from taking the car from my floor."—*John Lee Mahin.*

### HOW CURTIS BACKS 'EM UP

Cyrus H. K. Curtis is America's greatest publisher. After successfully putting the *Ladies' Home Journal*, *Saturday Evening Post* and *Country Gentleman* in the front rank, at 64 he bought the *Philadelphia Public Ledger* and has made it an internationally known daily newspaper.

He picks men with rare judgment. He manages them by apparently leaving them alone. He supervises without interference.



It was my privilege, about twenty years ago, to get a line on how he operates. Thomas Balmer was then representing Mr. Curtis in Chicago. Mr. Balmer was born in Dublin. In every way he exemplified the best qualities of the Irish race, —but everyone who met him was impressed with the fact that where Mr. Balmer was, he would participate in anything that happened.

Once Mr. Balmer, in a meeting of Chicago advertising men which was held to launch a new advertising magazine to advance Western advertising interests, said that the Curtis Publishing Company would take one page each month for a year.

A few days later, in great excitement, Mr. Balmer showed me a longhand letter from Mr. Curtis, which read substantially as follows:

“My dear Balmer—You embarrassed me more than I know how to express by your action. But, of course, I will sustain you in this and also in anything else you may do.”

Mr. Balmer's comments were: “How can I answer such a letter. He gives me no chance for a comeback. I can't take exception to what he says and yet I never had such a rebuke in my life. Mr. Curtis practically tells me I haven't any business judgment but I mean so well that he will stand anything from me.”—*John Lee Mahin.*

## CHECKING UP

### (Conversation over the telephone)

Young man in chauffeur's uniform enters drug store and asks druggist to use telephone. Enters telephone booth, calls for number and the following conversation ensues:

Chauffeur: Is this Mrs. Blank?

Mrs. Blank: Yes.

Chauffeur: Do you need a chauffeur?

Mrs. Blank: No.

Chauffeur: You are sure you don't need a good chauffeur?

Mrs. Blank: Yes.

Chauffeur: Have you a machine?

Mrs. Blank: Yes.

Chauffeur: Have you a good chauffeur?



Mrs. Blank: Yes.

Chauffeur: You are satisfied in every way?

Mrs. Blank: Yes.

Chauffeur: Well, I am sorry Mrs. Blank that you don't need a good chauffeur, but I will call you up again sometime.

(Rings off. Chauffeur comes out of telephone booth and druggist who overheard conversation says:)

Druggist: Boy, I heard you asking for a job.

Chauffeur: Yes.

Druggist: I can give you a job. I need a chauffeur and messenger around here.

Chauffeur: I don't want a job.

Druggist: You don't want a job? I just heard you asking for one.

Chauffeur: I know, Boss, I was asking for a job, but I don't want one.

Druggist: You are a chauffeur, aren't you? Isn't that the work you do?

Chauffeur: Yes, but I don't want a job, I have one.

Druggist: Who do you work for?

Chauffeur: I work for Mrs. Blank.

Druggist: Why did you call up Mrs. Blank and ask her for a job?

Chauffeur: Oh, I was only checking up on myself to see whether she was satisfied.

If more checking up was done by various individuals as they go through life, it is the writer's opinion a great many would have considerably more success than they now enjoy and incidentally employers would not have as much complaint to make.  
—*Harry E. Weil.*

### BUSINESS WAS BAD

An ichthyologist divided an aquarium into two sections by means of a sheet of plate glass. In one compartment he placed some nice shiny minnows and in the other a healthy black bass, of the vicious "small mouth" variety.

For three days that bass kept charging into the glass partition in an effort to get at the delectable minnows on the other



side. At the end of that time he desisted from further efforts and surrendered to pessimism, melancholia, and a sore head.

But the following day, the ichthyologist removed the glass partition, and the minnows swam all around the bass. But he paid no attention to them. He was thoroughly sold with the idea that business was bad.—*John T. Dorrance.*

### WHAT OTHERS ARE DOING

A large red rooster, who was the commander of his flock, found a hole under his own fence one afternoon, and strayed off into the adjoining barn lot. The neighboring lot happened to be an ostrich farm and while strolling round he chanced upon an ostrich egg. He didn't know what it was, but he pecked at it and found it would roll. So he pecked again and again, and during the process rolled it down to the hole through which he had crawled, on through the hole and into his own barnyard. The hens gathered round to see what it was all about. Looking earnestly at his ladies the rooster said: "Girls, I haven't brought this here because I have any complaint to make, but in these days of competition I just wanted to show you what others are doing."—*Wm. J. Woolley.*

### STATE YOUR BUSINESS

A dapper youth, making his first calls as a salesman, opened up his solicitation on a crusty sales manager in this fashion:

"Good morning, sir—I'm—er—I'm a little stiff from bowling."

"I don't give a —— where you're from, you little stiff; what's your proposition?" exploded the gruff sales manager.

### MY CALF, POP'S COW

My father was a breeder of good horses, cattle and hogs. One day a valuable sow gave birth to thirteen pigs. The table was set for twelve and the thirteenth pig was out of luck. Instead of knocking it in the head to keep it from starving to death, my father gave it to me. I fed it from a bottle. It was soon able to drink from a pan, then from a trough, then it



was put out with the other hogs. Eventually it weighed about 350 lbs. Father took it to town with the other hogs, sold it, put the money in his pocket, came home and gave me another runt pig.

Right there was where I began to question whether or not there was any money in the live stock business. I decided I'd like to be a street car conductor because they got the money first. Of course, my father had no intention of being unfair to me, or of discouraging me. He was a generous man and spent much more than the price of the hog on me. He simply followed the custom of the time among farmers.—*T. W. Le Quatte.*

### THE SIX BLIND HINDOOS

(A modern application of an old story is made by C. M. Ripley in introducing his lecture on corporation economics, entitled "A Bird's Eye View of a Big Corporation.")

Six blind hindoos were led up to the elephant and asked to tell what it was like. One of the blind hindoos caught hold of the elephant's trunk and he said: "An elephant is like a big snake."

Another blind hindoo got hold of the elephant's tusk and he said: "An elephant is like a spear."

Another blind hindoo got hold of the elephant's ear, and he said: "An elephant is like a fan."

Another blind hindoo got hold of the elephant's leg and he said: "An elephant is like a tree."

The next blind hindoo ran his hand over the big flat side and he said: "An elephant is like a wall."

And the last blind hindoo, who took hold of the elephant's tail, said: "It is plain to be seen that an elephant is like a whip."

Now each of the blind hindoos judged the whole of the elephant by the small part with which he came in contact; and each employee in a big corporation is likely to judge the whole of the corporation by the small part with which he comes in contact.



## SPEECH MAKING

### A DULL SPEECH

It is not true that the late Duke of Devonshire actually fell asleep while addressing the House of Lords. But he did yawn, quite frankly, in the midst of one of his own speeches. To a lady who was pressing him to explain how he came to do such a thing he replied, "Madam, you have no idea what a dull speech that was."

### A LITTLE LOWER THAN THE ANGELS

For appropriateness, grace and beauty the story told of Ambassador Choate's first speech at a banquet in the Guild Hall in London stands out among great stories.

At this banquet the Guild Hall was crowded. At the table sat the best blood and the most distinguished men in England. In the gallery surrounding the Guild Hall sat the fashion and beauty of England's women.

As Ambassador Choate's reputation as a speaker and wit had preceded him, everybody was naturally on tiptoe to hear his opening remarks. Ambassador Choate rose slowly, bowed to the chairman and the gentlemen at the table and then raised his eyes, sweeping the gallery crowded with women. "Never before"—commenced the Ambassador—"have I fully realized the truth of the Scripture where it states—'God created man just a little lower than the angels!'"

The effect was instantaneous. The applause was deafening. With that first sentence Choate won his place in the hearts of the British, which he held ever afterward.—*Saunders Norvell.*

### KILLED BY ELOCUTION

One morning, after passing over the Bridge of Sighs in the city prison and approaching one of the prisoners' pens, I overheard this conversation:



"I tell you, Jim, the evidence as submitted to the jury will certainly hang him."

"Hang him? Why they don't hang men in this state."

"Well, what do they do with them?"

"Why, they kill 'em by elocution."—*Donald H. Knott.*

### WHAT'S TIME TO A HOG?

We had a man in New York who has lately passed away and who was just as popular as Martin W. Littleton and just as capable. They were among the best after-dinner speakers in New York. You have probably heard of Job Hedges; if you haven't heard him, you have heard of him. They were both invited to speak at the same banquet, and Job Hedges spoke first. After talking about an hour Job said, "I have finished my speech; now I am going to make Martin Littleton's speech," and he started all over again and spoke for at least an hour more. All the time Martin sat there chafing at the bit. Finally Job said, "Well, now I have concluded Littleton's speech"; and sat down. Then the presiding officer introduced Martin Littleton.

Martin said, "My time has been taken up, and I know you are too weary, after having listened to Job, to want another speech; I will ask you to tarry while I tell you of an episode in my father's life.

"I was born in the mountain district of Tennessee, and, among other things that my father did down there, was to raise hogs. One day my father was out in front of the house, feeding whole raw carrots to the hogs; a neighbor passed and said, 'Mr. Littleton, that's no way to feed carrots to the hogs.' He said, 'Why, Mr. Littleton, you boil them, and you slice them, and then they digest them much more quickly.' And my father said, 'What's time to a hog?'"—*Max D. Steuer (Modern Eloquence, VIII).*

### KEEP YOUR MOUTH SHUT

At an evening function, a gentleman was unexpectedly called upon to make a speech. Obviously embarrassed, he arose and opened his remarks as follows: "It is indeed kind of the chair-



man to have done me the honor of calling upon me to make an address on this occasion. I must confess, however, that I am totally unprepared and I am reminded of a striking verse in the book of Jonah. You all remember the story and no doubt you remember Jonah's expostulation to the fish. To you, Mr. Chairman, I would quote Jonah's closing words to the fish, —'I wouldn't have been in this hole if you had kept your mouth shut.'"—*Rabbi D. de Sola Pool*.

### A FELICITOUS TOASTMASTER

I am reminded of something the Hon. John Temple Graves told as happening to him in England when he was to be the first speaker. The toastmaster turned with extreme infelicity to the honorable gentleman on his right and said, "Mr. Graves, shall we let them enjoy themselves a little longer, or shall we let them have your speech?"—*Ernest M. Stires (Modern Eloquence, III)*.

### THE LONGER HE TALKED, THE MORE TIME HE LOST

The experiences of a member of Congress, newly elected to office, are extremely varied and often highly amusing.

No sooner had I taken a seat as a member of the 62d Congress, than I was prevailed upon by a distinguished committee of gentlemen to provide a postprandial speaker for a dinner of one of the oldest Washington charitable organizations, who could provoke discussion upon a topic that would be absolutely novel to the assembled diners.

It so happened that within my acquaintance there was one of the venerable paymasters of the United States Navy, who had witnessed the conflict between the northern frigate *Cumberland* and the iron-clad *Merrimac* of the Confederate forces, which latter vessel had become the terror of Southern waters.

It was the contention of my naval friend that despite the record impressed upon the pages of history, the subsequent conflict between the famous *Monitor* and the *Merrimac*, of which my excellent friend had been an eye-witness, instead of being a victory for the famous Ericson craft, was in reality, a



drawn engagement, and that neither vessel was in a position to continue the offensive when hostilities ceased.

My friend had told this story in such marvelous detail, after an interval of over fifty years, that I immediately suggested his name as a speaker for the members of the dining organization.

At about 12:30 A.M. one morning while engaged in my office in the House Office Building with an enormous routine of Congressional matters, and with a force of several stenographers at work, I received a telephone message from the chairman of the dining committee, who advised that the venerable paymaster had begun his story of the *Monitor* and *Merrimac* engagement at 10:45 P.M., that it was then 12:30 P.M., and the venerable naval official was then upon the bridge of an American frigate, it was 1857, off the coast of Peru, and vigorously engaging a British slave ship.

The chairman stated that the dining room was becoming exceedingly cold, and that in line with the old paymaster's address, it was four years before Fort Sumter was to be fired upon.

I endeavored to adjudicate the difficulty by suggesting that the venerable paymaster finish his story of the naval bombardment of the British slave ship by the American frigate, and that the engagement between the *Monitor* and *Merrimac* should be a supplementary address, to be delivered at the next meeting of the dining organization. My amendment to the evening's program of the diners was enthusiastically approved and carried by a tumultuous vote. However, before the next dinner of the organization was held, the venerable paymaster had been gathered to his fathers.

I believe that this is one of the unmatched incidents of after-dinner speaking in America, that a man in his 90th year, and chosen to address a distinguished company of Washington diners, upon one of the greatest naval battles of all times, should present a preface to his address requiring an hour and three quarters and still remain some seven years away from the date of the battle.—*James M. Curley, Mayor of Boston.*

### THREE IN A ROW

A rather absent-minded after-dinner speaker was called upon



to make a patriotic speech. He prepared carefully; and as it was during the period of the Versailles Peace Conference, he felt it was due to President Wilson to be linked with other great figures of American history in his climax.

However, as his memory was tricky, he put in his inner coat pocket a sheet containing the three great names—Washington, Lincoln, and Wilson.

His climax as usual sent the blood careening to his head as he intoned his tribute with a growing crescendo, at the end of which he was to link the three names.

"Three men," he orated in tensely emotional tones, "have come to America in each of three great crises in her career; three men who were American to the core; three men who have built the nation's fame and been the guardian of the nation's prestige; three men close to the heart of us all; three men whom even the other nations of the earth have respected and revered; three men whose names will ring immortally down the halls of fame—" Here, his memory for the names failing him, as usual, he hastily drew open his coat, looked down at the pocket and then continued—"their names I now solemnly mention—*Hart, Schaffner & Marx!*"—*J. George Frederick.*

### LET HER GO

A cruel friend of former Senator Blackburn of Kentucky tells this campaign story at his expense: Years ago, when he was first running for Congress, Mr. Blackburn was present one day at a hanging. After the sheriff had adjusted the rope, he looked at his watch and found that he was some minutes ahead of time. He turned to the prisoner and said: "You have still ten minutes left to live; perhaps you would like to say something to the crowd." But the prisoner was sullen and said that he would most decidedly not like to say anything. Whereupon Joe Blackburn jumped up and said: "If the gentleman does not want his time and will kindly yield it to me, I should like to present myself as a candidate for your suffrages. If elected to Congress, I—" But this was too much for the prisoner. "Mr. Sheriff," he said, "I'm to be hung but not tortured, and I won't insist on a few minutes more life when the alternative is to listen to one of Joe Blackburn's speeches. Let her go, Mr.



Sheriff." The sheriff obligingly "let her go," and the prisoner was launched into eternity.

### IN STATU QUO

It was at a banquet held by the Billy Sunday Club of Atlanta, an organization of business men banded together for the purpose of personal work and evangelism, where the honor guest and chief speaker of the evening was Mr. Fred Sullens, editor of the Jackson *Daily News* of Jackson, Miss., who during a recent evangelistic service conducted by Gipsev Smith, Jr., had been thoroughly converted and had dedicated his paper as well as himself to the advocacy of religion. On this occasion, he had been invited to Atlanta to tell the story of his conversion, and a very representative group had gathered to hear him.

The toastmaster noticing that there were some other newspaper men present, called most unexpectedly on one of them to give his testimony. The gentleman was evidently taken absolutely by surprise but rising to the occasion, he illustrated his feelings by the following anecdote:

"In one of the frontier cities of the West at the time when law and order was enforced by whatever group of volunteers might care to take the trouble to do it, a certain bad man became so troublesome that a vigilance committee finally decided to rid the country of the pest.

"This they did effectively by first hanging him to a limb and then shooting him full of holes. Finally having taken him down, they left a paper pinned to him on which they had written this inscription: 'In statu quo.'

"Hearing that there was a corpse out in the country, the sheriff went out to investigate and found his man with the aforesaid inscription pinned to his chest. In great perplexity, he asked his deputy what the paper meant, and the deputy was no better able to decipher it than was the sheriff, so the two of them went to town to a man who had the reputation of having some 'larning,' and asked him to tell them what it meant. After reading it several times, he said, 'I don't believe I can exactly explain to you the reading but as nigh as I can come to it, it means, this here fellow was in a mighty bad fix.'"



In conclusion, the reporter stated, "About all I can say about my own experience is that I find myself 'In statu quo.'"—*Rev. R. O. Flinn.*

### ANOTHER MAN'S WIFE

In New York, we have a very popular after-dinner speaker in the person of the Reverend Doctor Stires. He was delivering a speech at a banquet one night. At the outset, he said to the assembled guests that before opening upon his text, he wished to offer a toast. Raising his glass toward the balcony where the ladies were to be found, he made a grand sweep and said: "To the ladies. To the ladies. To the ladies. The best part of my life I spent in the arms of another man's wife—my mother."

There was an Englishman on the platform who was to be the guest at a banquet a week hence. About ten minutes later, the sentiment which Dr. Stires had uttered reached him and he applauded. Then he whispered to his neighbor: "Next week I am going to be a guest at a banquet. That is a great toast the doctor has given, and I will repeat it in his very words when I am called upon to speak." His banquet, in good time, came on, and he had been praised by the speakers and was finally introduced to his audience. He said: "Ladies and gentlemen, before I take up the text of my address, I wish to offer a toast that I heard in New York about a week ago," and raising his glass in imitation of Dr. Stires, he made a sweep toward the balcony and said: "To the ladies. To the ladies. To the ladies. The best part of my life I spent in the arms of another man's wife—(hesitation). By Jove! I forget her name!"—*Max D. Steuer (Modern Eloquence, VIII).*

### SWEARING OFF

That was my first plunge into the great American athletic sport of after-dinner speaking. Since that time I have lived through a perilous life, and now I have sworn off. I swore off about three years ago, but the way I swore off was like the way



the Connecticut deacon swore off eating clams. He ate too many one day, and it made him feel very uncomfortable and pious, and he thought that he would have recourse to prayer, and he said, "Oh Lord, heal thy servant of this grievous illness, and I faithfully promise thee that he will never eat any more clams—very few, if any. Amen."—*Rev. Henry van Dyke.*

### THE BLESSING OF REST

Your hearty greeting tempts me to compliment you as a Hibernian complimented his friend, when he said: "May you live to eat the chicken that scratches the top of your grave." When I rise to speak I remember that the most natural thing in the world for an American to do is to make a speech. When the genuine American is born and gets fairly on his feet, the first thing he does is to say "Fellow citizens," and after he has got through with the world and is about to leave, he says, "One word more." But silence sometimes is more agreeable than speech, as when the man said to the bird trainer: "I gave you fifty dollars to teach my wife's parrot how to talk. How much will you charge to teach the confounded bird to shut up?" And then there are times when silence is more restful than speech, as when the lady asked the physician for some medicine and he said, "Madam, all you need is rest." "Oh," she says, "just look at my tongue." "Ah," says he, "that needs rest, too." But who could keep silence when there is such a toast as this presented, and I am asked to tell why I like the Dutch?—*T. DeWitt Talmage.*

### HE WAS NOT LOST

Being launched into a theme as vast as this, one feels that he may be in danger as the wandering Indian was on the prairie, who, when asked if he was lost, said, "No; Indian no lost; tepee lost."—*Rev. R. S. Storrs.*



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